



Tracy W. Hatch
General Attorney

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: (850) 577-5508
th9467@att.com

September 19, 2013

Ms. Ann Cole
Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**RE: Docket No. 120208-TX:
Petition of the Competitive Carriers of the South, Inc., to initiate
rulemaking to revise and amend portions of Rule 25-22.0365,
Florida Administrative Code**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, LLC d/b/a AT&T Florida's
Comments, which we ask that you file in the captioned docket.

Copies have been served to the Parties shown on the attached Certificate of
Service list.

Sincerely,

s/Tracy W. Hatch

Tracy W. Hatch

cc: Parties of Record
Gregory R. Follensbee
Suzanne L. Montgomery

1043580

**Certificate of Service
Docket No. 120208-TX**

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and First Class U. S. Mail this 19th day of September, 2013 to the following:

Kathryn Cowdery, Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Tel. No.: (850) 413-6216
kcowdery@psc.state.fl.us

Competitive Carriers of the South, Inc.
Carolyn Ridley, President
2078 Bowling Green
Bowling Green, KY 42104
Tel. No.: (615) 584-7372
carolyn.ridley@twtelecom.com

Competitive Carriers of the South, Inc.
Garry Sharp, Executive Director
P.O. Box 058303
Nashville, TN 37215
Tel. No.: (615) 665-8519
glsharp@comcast.net

**Florida Cable Telecommunications
Association, Inc.**
David A. Konuch
246 E. 6th Avenue
Tallahassee, FL 32303
Tel. No.: 850-681-1990
Fax. No.: (850) 681-9676
dkonuch@fcta.com

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe Street, Suite 601
Tallahassee, FL 32301-1839
Tel. No.: 850-521-1706
Fax. No.: (561) 671-2597
bkeating@gunster.com

**Joint Administrative Procedures
Committee**
Ken Plante, Coordinator
680 Pepper Building
111 W. Madison St.
Tallahassee, FL 32399-1400
Tel. No.: 850-488-9110
Fax. No.: 850-922-6934
joint.admin.procedures@leg.state.fl.us

Dulaney L. O'Roark III
Verizon Florida LLC
610 E. Zack Street, 5th Floor
Tampa, Florida 33602
Tel. No. (678) 339-5081
Fax. No. (678) 339-8492
de.oroark@verizon.com

Susan S. Masterton
Embarq d/b/a CenturyLink
315 South Calhoun Street
Suite 500
Tallahassee, FL 32031
Tel. No. (850) 599-1560
Fax. No. (850) 224-0794
susan.masterton@centurylink.com

s/Tracy W. Hatch

Tracy W. Hatch

FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Competitive Carriers of the) Docket No. 120208-TX
South, Inc., to initiate rulemaking to revise and)
Amend portions of Rule 25-22.0365, Florida)
Administrative Code)
_____) Filed: September 19, 2013

COMMENTS OF AT&T FLORIDA

BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T Florida”) appreciates the opportunity to file these Comments following the second rule development workshop on August 20, 2013.¹ Based on the discussions at the workshop and the informal dialogs among the parties, AT&T Florida continues to maintain that the expedited process proposed by CompSouth is not needed and the current process in Rule 25-22.0365, Florida Administrative Code (the “Rule”) should be retained without alteration. The Rule currently provides a process for expedited proceedings and already encompasses the “flexibility” that CompSouth claims is needed. Throughout the discussion of the proposed changes during two workshops and meetings between the parties, CompSouth has been unable to point to any failure of the Rule to accommodate any actual problem or case. Moreover, CompSouth’s proposed “super expedited” 60-day process overlaid on the existing process would not add anything to the Rule except confusion and uncertainty and, in some circumstances, open the door to significant violations of due process. Subject to certain minor proposed changes identified below, the Commission should reject the proposed changes to the expedited dispute process in the Rule proposed by CompSouth and leave the current process unchanged.

¹ All references in AT&T Florida’s Comments are to the sections or subsections in the text of the draft proposed rule that was circulated by CompSouth on September 5, 2013, unless the context provides otherwise. Highlighted text indicates AT&T Florida’s suggested changes to the draft rule.

I. General Comments

CompSouth continues to maintain that the current version of the Rule is not “customer friendly” because when a customer is out of service or the customer’s service is impaired, and when there is a dispute between carriers as to the carrier responsible for the problem, the operation of the current Rule takes too long to resolve the intercarrier dispute. In its latest version of proposed changes,² CompSouth has narrowed the proposed scope of its “super expedited” process to instances where a customer is out of service or there is a failure to timely port a customer’s number. The proposed changes also exclude billing disputes from the super expedited process. The narrowing of the scope of instances in which the proposed super expedited process could be invoked has not altered the fundamental problem of the confusion and uncertainty as to the particular procedural steps, or lack thereof, that would be available as well as their attendant timelines.

CompSouth’s proposed flexibility, with its desired rush to judgment and a “to be identified later” procedural process, would foster disputes as to the appropriate procedural process and bog down the expedited process at the particular time that a clear expeditious process is sought. Note that these types of procedural debates are already resolved by the process set forth in the current Rule – the process that CompSouth is trying to change.

CompSouth’s proposed changes would impose an uncertain, unpredictable ad hoc process which is the antithesis of what a rule is supposed to do which is to promote predictability and certainty.

More importantly, CompSouth has yet to explain how its super expedited 60-day process would in any way help a customer who is without service or has not had its number ported – the

² The changes to the Rule proposed by CompSouth have evolved over time. In addition to AT&T Florida’s comments herein, AT&T Florida also adopts and reiterates its prior comments filed February 5, 2013, to the extent CompSouth has not abandoned the proposed language or positions to which AT&T Florida’s prior comments are directed.

two specific instances in which its proposed super expedited process would be invoked. It is unlikely that any litigation expedited or otherwise, could resolve these types of issues.

More importantly, as noted in AT&T Florida's prior comments, CompSouth has not identified any instance in which any of its members or anyone else has either invoked or attempted to invoke the current Rule and that the Rule precluded the speed of resolution it desires here. Without having at least attempted to invoke the Rule, or cited an example that could not be contemplated by the Rule, CompSouth has no basis to argue that the Rule is in anyway deficient or should be changed.

Finally, any reasonable reading of the Rule as it currently stands clearly would allow the expedited process that CompSouth claims it needs. CompSouth would simply need to present sufficient information to justify such a process to the Prehearing Officer. Accordingly, there is simply no basis to support amendment of the Rule to impose a super expedited process.

II. Comments on Specific Rule Sections

Section 2

CompSouth proposes the following addition to Section 2 of the Rule:

In the event that the parties are unable to resolve their dispute independently, a party intending to invoke the expedited dispute resolution process addressed herein shall, prior to filing a request under subparagraph (3), notify Commission staff of the dispute and request that Commission staff conduct an informal meeting. Such meeting shall be conducted within 7 days of the request for the purpose of discussing the matters in dispute, the positions of the parties, possible resolution of the dispute, any immediate effect on customers' ability to receive service, anticipated discovery needs, and case scheduling.

This language is simply a reflection of current practice at the Commission. AT&T Florida has no objection to this proposed change.

Section 4

CompSouth proposes to modify Section 4(d) of the Rule as follows:

(d) A statement attesting to the facts that the complainant company attempted to resolve the dispute informally and the dispute is not otherwise governed by dispute resolution provisions contained in the parties' relevant interconnection agreement; and

This language makes explicit that any changes to the rule do not interfere or supersede the contractual dispute resolution provisions in an applicable interconnection agreement. AT&T Florida supports this change to the Rule.

Section 8

CompSouth proposes to modify Section 8 of the Rule as follows:

(8) No sooner than 14 days after the filing of the request for expedited proceeding under either paragraph (9) or (13) hereof, but promptly thereafter, the Prehearing Officer will decide whether use of the expedited proceeding is appropriate. The decision will be based on the considerations set forth in provisions of Section 364.16(6), F.S., the materials initially filed by the complainant company ~~the factors provided in Section 364.058(3), F.S., the materials initially filed by the complainant company~~ and, if a response is filed, the materials included in the response, as well as the timeliness of the complaint as it relates to the facts giving rise to the dispute.

CompSouth's proposed changes to Section 8 clarify the statutory basis for the Rule and add criteria for making a determination to invoke the expedited process in the Rule – the timeliness of the complaint in relation to the facts giving rise to the complaint. AT&T Florida supports the clarification of the statutory basis for the Rule and supports consideration of the timeliness of the complaint in relation to the facts in deciding whether to invoke the expedited procedural provisions of the Rule.

Section 13

The proposed changes to Section 13 are the core of CompSouth's proposal to create a 60-day "super expedited" procedural process. CompSouth's proposed changes would force the

Commission to render a decision within 60 days of the filing of a complaint. Unlike the current Rule which contains a specific procedural schedule and the dates for each event, the 60-day proposal does not identify or set the schedule for each of the procedural steps that are part of a Commission proceeding. The proposal further would mandate that the Commission schedule a hearing as soon there is an open date on the Commission's calendar between 21 and 60 days after filing a complaint. This belies the "flexibility" that CompSouth claims it wants the Commission to have and is problematic in many ways.

Significantly, this proposed provision would restrict the Prehearing Officer's ability to tailor a schedule to the conditions of the case presented and would force a rush to judgment by the Prehearing Officer and the Commission. Because the procedural schedule must be backed up from the hearing date under the Commission's standard processes, CompSouth's proposal also raises substantial due process concerns regarding a party's ability to respond to a complaint and adequately prepare for a proceeding. As noted above, the proposal will also foster procedural disputes at a time when CompSouth's stated goal is to quickly move forward to substantive resolution. Perversely, the proposed changes could also create issues against the Commission itself if a complainant is not satisfied with how fast the Commission can hear the case and levels a complaint that the Commission failed to follow its own rule.

As a true illustration of the fundamental problem inherent with CompSouth's proposed super expedited procedure, CompSouth has not even attempted to delineate how all the procedural steps in a proceeding can be accommodated within a 60-day timeframe. For example, CompSouth's proposal provides for a response to the complaint within 10 days. Unlike the current Rule, however, CompSouth fails to account for the very real possibility of a motion to dismiss and the resulting response all the while rushing to a hearing and decision. Glossing over

or simply ignoring necessary procedural opportunities and the time needed to reasonably resolve them in a rush to judgment raises serious issues of due process.

The most glaring problem of CompSouth's proposed changes is that CompSouth ignores the existing provision of the Rule in Section 9 that provides, "*Unless otherwise provided by order of the Prehearing Officer, based on the unique circumstances of the case*, the schedule for each expedited case will be as follows: . . ." Quite simply, what CompSouth wants in terms of providing for an expedited procedure is already contemplated in current Section 9 of the Rule. Under the current Rule, all that is required is that the complainant present sufficient information to persuade the Prehearing Officer to set a procedural schedule other than set forth in the Rule. The existing flexibility already extant in Section 9 of the Rule completely eliminates any need for CompSouth's proposed changes.

III. Conclusion

As shown above, CompSouth has failed to provide any basis to support its position that the Rule must be amended. The lack of specific defined procedural steps and time lines in the super expedited 60-day process raises clear questions of procedural due process. The Rule as written provides all the flexibility that is needed to address cases as expeditiously as necessary and CompSouth has failed to present any evidence or even a hypothetical scenario in which the Commission's existing Rule is not sufficient. Accordingly, AT&T Florida respectfully submits that CompSouth's proposed 60-day process be rejected and that the Commission terminate the instant rulemaking proceeding.

Respectfully submitted this 19th day of September, 2013.

AT&T Florida

s/Tracy W. Hatch

Suzanne L. Montgomery

Tracy W. Hatch

c/o Gregory R. Follensbee

150 South Monroe Street

Suite 400

Tallahassee, Florida 32301

(305) 347-5558

sm6526@att.com

th9467@att.com