

Shawna Senko

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Sent: Thursday, September 19, 2013 4:15 PM
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Subject: Docket No. 120208 - Further Comments of the Florida Cable Telecommunications Association
Attachments: Docket 120208 - Further Comments of FCTA.pdf

Attached for electronic filing in the referenced docket, please find Further Comments of the Florida Cable Telecommunications Association. If you have any questions, please contact David Konuch at the number below.

- A.** The person responsible for this electronic filing is:
David A. Konuch
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- B.** The docket title is: In Re: Docket No. 120208 – Petition to initiate rulemaking to revise and amend Rule 25-22.0365, F.A.C., by Competitive Carriers of the South, Inc.
- C.** This document is filed on behalf of the Florida Cable Telecommunications Association, Inc.
- D.** This document has a total of 10 pages.
- E.** Description of document: Further Comments of the Florida Cable Telecommunications Association on the Petition to initiate rulemaking to revise and amend Rule 25-22.0365, F.A.C., by Competitive Carriers of the South, Inc.

Thank you,

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Florida Cable Telecommunications Association

Steve Wilkerson, President

September 19, 2013

VIA ELECTRONIC FILING

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

Re: **Docket No. 120208-TX** – Petition to initiate rulemaking to revise and amend Rule 25-22.0365, F.A.C., by Competitive Carriers of the South, Inc.

Dear Ms. Cole:

Enclosed for electronic filing in the above referenced docket, please find the Further Comments of the Florida Cable Telecommunications Association, Inc.

Please do not hesitate to contact me if you have any questions. Your assistance in this matter is greatly appreciated.

Sincerely,

David A. Konuch
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Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to initiate rulemaking to revise
and amend Rule 25-22.0365, F.A.C., by
Competitive Carriers of the South, Inc.

Docket No. 120208

Date: September 19, 2013

**FURTHER COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS
ASSOCIATION ON THE PETITION TO INITIATE RULEMAKING TO REVISE AND
AMEND RULE 25-22.0365, F.A.C. BY COMPETITIVE CARRIERS OF THE SOUTH,
INC.**

Florida Cable Telecommunications Association, Inc. ("FCTA") hereby submits its Further Comments on In re: Petition to initiate rulemaking to revise and amend Rule 25-22.0365, F.A.C., by Competitive Carriers of the South, Inc. ("CompSouth"), in response to the Commission Staff's request for comments at its August 20, 2013 Workshop. FCTA also submitted comments on February 4, 2013 in this proceeding.

INTRODUCTION AND BACKGROUND

FCTA members Atlantic Broadband, Advanced Cable, Bright House Networks, Comcast, Cox, and Mediacom provide video, Internet access, and residential and enterprise telephony to millions of Floridians. This docket concerns CompSouth's proposal to revise and improve the rules for expedited dispute resolution between certificated communications providers.

In this era of telecommunications deregulation, the Commission's ability to preserve a competitive marketplace serves as its main tool for ensuring quality, availability, and reasonable prices for telephony services provided by telecommunications companies over which the Commission possesses jurisdiction. All stakeholders – FCTA, plus incumbent local exchange companies (ILECs) such as AT&T, CenturyLink, and Verizon, participated in efforts to reach consensus on CompSouth's proposal, which has been modified several times, and have succeeded in narrowing the issues for resolution.

In its original comments, FCTA stated that:

- Rule 25-22.0365(3)'s pre-filed testimony requirement serves an important "gatekeeping" function and should be retained.
- The Commission should adopt clear standards for when expedited dispute resolution will be granted.
- The definition of "immediate and negative impact on a customer" should be narrowed by requiring the prehearing officer to ask whether the conduct results in the customer not receiving service, or a prospective customer is prevented from switching to a new provider as a result of the conduct. If the answer to either question is "yes," the "super expedited" treatment should be granted.
- Any intercarrier dispute within the purview of 364.16 should be eligible for expedited dispute resolution; however, billing disputes should not be eligible for expedited treatment, unless they meet other anticompetitive criteria for intercarrier disputes under Section 364.16.
- The time limit for decision in "super expedited" proceedings should be 60 days from the pre-hearing officer's decision to take the case.

After several rounds of discussion and comment, consensus appeared to exist among stakeholders on adopting many of FCTA's proposals, including its definition of "immediate and negative impact on a customer," the prefiling requirement, and time limits for resolving disputes. As a result of the parties' efforts to narrow the issues, FCTA views the remaining issues to be resolved as follows:

- The revised rule should make clear that any dispute within the purview of 364.16 should be eligible for expedited dispute resolution, provided that it otherwise meets the criteria for expedited treatment;
- While all parties agree that the expedited dispute process should not be applicable for pure billing disputes, the rule should state this explicitly;
- Both the initial filing and the rebuttal testimony should be written and pre-filed, as opposed to delivered orally at the hearing.

CompSouth, which filed its comments two days early, attached as Exhibit B to its comments a version of the proposed rules reflecting the parties' suggestions up to that point. For the Commission's convenience, FCTA will refer to CompSouth's Attachment B document as the working document here, and has attached it as Exhibit 1 hereto (CompSouth Att. B/FCTA Ex. 1), and provides its comments based on that document.

ANALYSIS

I. Any dispute within the purview of 364.16 should be eligible for expedited dispute resolution, provided that it otherwise meets the criteria for expedited treatment, but should not be limited to the criteria in 364.16(6).

FCTA believes that any intercarrier dispute within the purview of 364.16 should be eligible for expedited dispute resolution. The Commission should have this tool, as resolution of intercarrier disputes is now the main way the Commission addresses price and service quality of providers as a result of deregulation. Moreover, the legislature in 2011 moved the expedited dispute resolution language into 364.16. The statute is very clear on this point and provides that, "Upon petition, the commission may conduct a limited or expedited proceeding to consider and act upon any matter under this section [364.16]." F.S. 364.16(6).

CompSouth's current proposed rule provides that the decision on whether to accept a dispute for super-expedited treatment will be based on "the considerations set forth in Section 364.16(6)," as well as the materials filed by the complainant, the response, and the timeliness of the dispute. CompSouth Att. B/FCTA Ex. 1 at 1, para. (8). However, Section 364.16(6) sets forth procedural, not substantive standards. While the considerations contained in 364.16 are important in determining whether to accept a dispute for super accelerated resolution, the rule should make clear that any dispute within the purview of 364.16 could potentially be considered on a super expedited basis if it otherwise fits within the Commission's jurisdiction.

FCTA submits that merely deleting the reference to subparagraph (6) would accomplish this goal and make the rule more clear. Accordingly, the Commission should revise the proposed rule to provide that the decision to accept a dispute for super expedited treatment will be based on "the considerations set forth in Section 364.16," and not 364.16(6). While a seemingly small point, making this change will prevent satellite litigation over the scope of the provision – an important consideration when attempting to resolve a dispute in the short time frame required by the rule here.

II. Billing Disputes Should Not Be Eligible For Super Expedited Treatment, Unless They Meet Other Anticompetitive Criteria For Intercarrier Disputes Under Section 364.16

FCTA noted in its initial comments that a billing dispute should not be eligible for super expedited dispute resolution, unless it violates other provisions of Chapter 364.16. For instance, a dispute where company merely refuses to pay another customer and threatens to disconnect, or actually disconnects for non-payment, without raising issues of unfair competition or other issues pursuant to Chapter 364.16 would not be eligible for expedited treatment. The Commission's role is to resolve competitive disputes

to ensure fair competition. It is not a collection agency. Therefore, the Commission's scarce resources should be focused on resolving competitive disputes, and not purely collection matters.

At the workshop, stakeholders expressed broad agreement with this view. However, some indicated that it would not be necessary to include language explicitly excluding billing disputes from the expedited dispute resolution rules. FCTA believes that language explicitly excluding billing disputes should be in the rule itself. Otherwise, nothing would prohibit a carrier from invoking the expedited dispute resolution rules for a pure billing dispute. While the current stakeholders involved in this proceeding all favor and support excluding pure billing disputes, without express language in the rule itself it would not be apparent that billing disputes are excluded from the scope of the rule.

The current proposal from CompSouth (Attachment B to CompSouth's comments, and Exhibit 1 hereto) does include express language excluding billing disputes from expedited treatment. *See* CompSouth Att. B./FCTA Ex. 1 at p. 2, para (13) ("This process shall not be available for disputes otherwise addressed by dispute resolution provisions in any applicable interconnection agreement of the involved parties nor for disputes properly construed as billing disputes." (underlining added)). FCTA supports that approach.

III. Basic Fairness Dictates that Rebuttal Testimony Should be Written and Pre-filed, Just As Initial Testimony Must Be.

FCTA supported a requirement that parties seeking expedited dispute resolution pre-file testimony and exhibits, and during the workshop, broad consensus existed concerning this approach. FCTA noted in its February 4, 2013 comments that, pursuant to current law, pre-filing exists at the main check against potentially frivolous complaints against carriers. Absent the extra effort required by pre-filing, parties would have an incentive to seek expedited rulings for every dispute, rather than just the exceptional ones.

Accordingly, FCTA views the pre-filing requirement as important check to ensure that parties seek expedited treatment only for exceptionally time-sensitive disputes.

The current proposal calls for pre-filed written testimony, but provides the pre-hearing officer with the option to determine "whether rebuttal testimony shall be prefiled or provided orally at hearing." CompSouth Ex. B/FCTA Ex. 1 at 2, para. 13(d). While permitting oral testimony instead of pre-filed might save time, FCTA believes that if initial testimony must be pre-filed, then rebuttal testimony should be as well. There are benefits to having a written record, and basic fairness dictates that the rules should be symmetrical, i.e., if initial testimony must be pre-filed and written, then rebuttal testimony should be as well. Accordingly, FCTA supports deleting proposed subparagraph 13(d) which gives the pre-hearing officer the option of allowing oral rebuttal testimony instead of requiring pre-filing.

CONCLUSION

FCTA believes that a well-crafted rule may never need to be invoked, but will serve as a powerful deterrent to anticompetitive actions.

Respectfully submitted this 19th day of September, 2013.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by Electronic Mail this 19th day of September, 2013.

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David A. Konuch

FCTA Exhibit 1

Attachment B – Post Workshop Changes on Current Rule

25-22.0365 Expedited Dispute Resolution Process for Telecommunications Companies.

(1) The purpose of this rule is to establish an expedited process for resolution of disputes between telecommunications companies (“companies”).

(2) To be considered for an expedited proceeding, the companies involved in the dispute must have attempted to resolve their dispute informally. 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.

(3) To initiate the expedited dispute resolution process, the complainant company must file with the Commission a request for expedited proceeding, direct testimony, and exhibits, and must simultaneously serve the filing on the other company involved in the dispute. The request for expedited proceeding is in lieu of the petition required by Rule 28-106.201, F.A.C.

(4) The request for expedited proceeding must include:

(a) The name, address, telephone number, facsimile number and e-mail address of the complainant company and its representative to be served, if different from the company;

(b) A statement of the specific issue or issues to be litigated and the complainant company’s position on the issue or issues;

(c) The relief requested;

(d) A statement attesting to the fact 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

(e) An explanation of why the use of this expedited process is appropriate. The explanation of why use of the expedited process is appropriate shall include a discussion of the following:

1. The number and complexity of the issues;

2. The policy implications that resolution of the dispute is expected to have, if any;

3. The topics on which the company plans to conduct discovery, including a description of the nature and quantity of information expected to be exchanged;

4. The specific measures taken to resolve the dispute informally; and

5. Any other matter the company believes relevant to determining whether the dispute is one suited for an expedited proceeding.

(5) Any petition for intervention shall provide the information required by paragraphs (4)(a)-(c) and (e) as it applies to the intervenor.

(6) The request for expedited proceeding shall be dismissed if it does not substantially comply with the requirements of subsections (2), (3) and (4), above. The first dismissal shall be without prejudice.

(7) The respondent company may file a response to the request. The response must be filed within 14 days of the filing of the request for expedited proceeding.

(a) The response shall include the name, address, telephone number, facsimile number and e-mail address of the respondent and the respondent’s representative to be served, if different from the respondent.

(b) The response to the request may include any information that the company believes will help the Prehearing Officer decide whether use of the expedited dispute resolution process is appropriate. Such information includes, but is not limited to:

1. The respondent’s willingness to participate in this process;

2. Statement of the specific issue or issues to be litigated from the respondent’s perspective, and the respondent’s position on the issue or issues;

3. A discussion of the topics listed in subparagraphs (4)(b)-(e)1.-5. above.

(8) No sooner than 14 days after the filing of the request for expedited proceeding, 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 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.

(9) Except as provided in paragraph (13) hereof or 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:

(a) Day 0 – request for expedited proceeding, direct testimony and exhibits are filed;

Attachment B – Post Workshop Changes on Current Rule

(b) Day 14 – deadline for filing a motion to dismiss, and a response to the request for expedited proceeding;
(c) Day 21 – deadline for filing a response to the motion to dismiss, if one is filed; and, deadline for filing petitions to intervene, and intervenor testimony and exhibits;

(d) Day 42 – deadline for the Commission staff to file testimony;

(e) Day 56 – deadline for the respondent to file rebuttal testimony.

(10) The Prehearing Officer shall decide whether post-hearing briefs will be filed or if closing arguments will be made in lieu of post-hearing briefs. In making this decision the Prehearing Officer will consider such things as the number of parties, number of issues, complexity of issues, preferences of the parties, and the amount of testimony stipulated into the record.

(11) The Commission shall make a decision on the dispute within 120 days of the complainant company's filing of the request for expedited proceeding, direct testimony and exhibits, except as otherwise provided in paragraph (13) hereof.

(12) Responses to discovery requests shall be made within 15 days of service of the discovery requests, unless the Prehearing Officer decides otherwise based on the unique circumstances of the case.

(13) Unless the Prehearing Officer otherwise determines in accordance with paragraph (8) hereof, a more accelerated process as set forth in this paragraph shall be available to address specific disputes that result in: a) a customer being out of service; or b) a failure to expeditiously port a customer's telephone number or transfer account information to the customer's carrier of choice. This process shall not be available for disputes otherwise addressed by dispute resolution provisions in any applicable interconnection agreement of the involved parties nor for disputes properly construed as billing disputes. If a dispute meeting the criteria hereof is not otherwise resolved through the informal meeting conducted in accordance with paragraph (2), then the following accelerated process shall be available:

(a) The complaining party may file a request for expedited proceeding consistent with subparagraph (4) of this Rule with additional information regarding the basis for invoking the provisions of paragraph (13) hereof, along with any testimony and related exhibits that the complaining party intends to offer in the proceeding.

(b) A response, if any, to the request shall be filed within ten (10) days of the request for expedited proceeding and shall otherwise be consistent with subparagraph (7) of this Rule.

(c) A hearing will be scheduled as soon as the Commission calendar will accommodate, but no sooner than twenty-one (21) days following the filing of a response, if any, or the date that such response would have been due to be filed pursuant to this Rule.

(d) The Prehearing Officer will make a determination, based upon the scheduled date of the hearing, as to whether rebuttal testimony shall be prefiled or provided orally at hearing.

(e) For purposes of proceedings arising under this subsection, the Prehearing Office may determine that responses to discovery requests shall be made in less than the 15 days, but shall in no instance require responses to be made in less than five (5) days.

(f) The Commission shall make a decision on the dispute within 60 days of the complainant company's filing of the request for expedited proceeding under this paragraph 13.

(g) Consistent with paragraphs (15) and (16) of this rule, the applicability of this accelerated process will be reassessed as factors affecting the complexity of the case, number of issues, number of parties, or customer impact change during the proceeding.

(134) Service of all documents on the parties shall be by e-mail, facsimile or hand delivery. An additional copy shall be furnished by hand delivery, overnight mail or U.S. mail if the initial service was by e-mail or facsimile. Filing of all documents with the Commission shall be by hand delivery, overnight mail or any method of electronic filing authorized by the Commission.

(145) The applicability of this rule to the proceeding will be reassessed as factors affecting the complexity of the case, number of issues, or number of parties change during the proceeding.

(156) Once the Prehearing Officer has determined that use of an expedited proceeding is appropriate, nothing in this rule shall prevent the Prehearing Officer from making a later determination that the case is no longer appropriate for an expedited proceeding based on the number of parties, number of issues or the complexity of the issues. Nothing in this rule shall prevent the Commission from initiating an expedited proceeding on its own motion.