

Shawna Senko

From: Keating, Beth <BKeating@gunster.com>
Sent: Tuesday, January 21, 2014 2:45 PM
To: Filings@psc.state.fl.us
Cc: Kathryn Cowdery; Pamela H. Page; 'HATCH, TRACY W (Legal)'; 'MONTGOMERY, SUZANNE L (Legal)'; 'de.oroark@verizon.com'; 'Masterton, Susan S'; 'joint.admin.procedures@leg.state.fl.us'; Beth Salak; 'glsharp@comcast.net'; 'Ridley, Carolyn'; 'David Konuch'
Subject: Docket No. 120208-TX
Attachments: CompSouth January 2014 Comments.PDF

Attached for electronic filing in the referenced docket, please find the Comments of the Competitive Carriers of the South, Inc. As always, please don't hesitate to contact me if you have any questions whatsoever.

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 S. Monroe St., Suite 601
Tallahassee, FL 32301
bkeating@gunster.com
Direct Line: (850) 521-1706

a. Person responsible for this electronic filing:

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 S. Monroe St., Suite 601
Tallahassee, FL 32301
bkeating@gunster.com
Direct Line: (850) 521-1706

b. **Docket 120208 -- Petition to initiate rulemaking to revise and amend Rule 25-22.0365, F.A.C., by Competitive Carriers of the South, Inc.**

c. On behalf of: Competitive Carriers of the South, Inc.

d. There are a total of pages: 9

e. Description: Comments on Draft Rule



GUNSTER
FLORIDA'S LAW FIRM FOR BUSINESS

Beth Keating | Attorney
Governmental Affairs
215 S. Monroe Street, Suite 601
Tallahassee, FL 32301
P 850-521-1706 C 850-591-9228
gunster.com | [View my bio](#)

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein. Click the following hyperlink to view the complete Gunster IRS Disclosure & Confidentiality note.

<http://www.gunster.com/terms-of-use/>



Writer's Direct Dial Number: (850) 521-1706
Writer's E-Mail Address: bkeating@gunster.com

January 21, 2014

VIA ELECTRONIC FILING - *FILINGS@PSC.STATE.FL.US*

Ms. Carlotta Stauffer, 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. Stauffer:

Attached for electronic filing in the above-referenced docket, please find a copy of the Comments of the Competitive Carriers of the South, Inc. on Commission Staff's proposed Modified Rule.

Thank you for your kind assistance with this filing. As always, please do not hesitate to contact me if you have any questions or concerns whatsoever.

Sincerely,

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

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-TX
Filed: January 21, 2014

COMMENTS OF THE
COMPETITIVE CARRIERS OF THE SOUTH, INC. (COMPSOUTH)
ON PROPOSED MODIFICATIONS TO RULE 25-22.0365, F.A.C.

The Competitive Carriers of the South, Inc. (“CompSouth”) hereby submit these Comments consistent with the Commission Staff’s direction in its January 6, 2014, email to the parties and in response to the Commission Staff’s proposed modifications to Rule 25-22.0365, Florida Administrative Code. With these Comments, CompSouth also submits a slightly modified Rule proposal (“Modified Staff Rule”) in order to address a lingering concern regarding the Staff’s proposal. The modified Rule proposal is attached hereto (Attachment A) with CompSouth’s proposed edit made on the Staff’s proposal.

I. BACKGROUND

1. On July 31, 2012, CompSouth submitted the Petition initiating this proceeding for the express purpose of seeking changes to Rule 25-22.0365, F.A.C., to provide for accelerated resolution of carrier disputes that directly impact a customer’s service.
2. On November 15, 2012, the Commission staff conducted a Rule Development workshop to discuss the changes to Rule 25-22.0365, F.A.C., proposed by CompSouth. Thereafter, on February 5, 2013, CompSouth offered comments, as well as a modified Rule proposal.
3. Over the course of the next few months, CompSouth engaged in ongoing dialogue with the various stakeholders regarding the CompSouth proposal. Reflecting those discussions,

CompSouth offered a further modified version of the Rule proposal on July 3, 2013. This version was noticed for workshop on August 20, 2013. In response to continued discussions with the other stakeholders, CompSouth offered additional revisions at that workshop.

7. Again, responding to further post-workshop dialogue with the stakeholders, CompSouth offered further revisions to its Rule proposal for consideration and discussion. On September 16, AT&T, Verizon, and CenturyLink indicated that they still maintained many, if not most, of the same concerns voiced at the August workshop.

8. On September 17 and 19, respectively, CompSouth and the other stakeholders submitted their post-workshop comments regarding the discussions had during and after the August 20, 2013, workshop.

II.

COMMENTS ON STAFF PROPOSAL

9. CompSouth acknowledges with appreciation the Commission Staff's efforts regarding this issue and the opportunity to submit these responsive Comments. CompSouth likewise appreciates the willingness of the other stakeholders in this proceeding to engage in dialogue throughout this process regarding CompSouth's proposals.

10. Having reviewed the Commission Staff's Modified Staff Rule, CompSouth's members are generally amenable to the Modified Staff Rule. Although it does not include modifications as extensive as those initially proposed by CompSouth, the Staff's version makes critical changes to the Rule with clarity and precision. In particular, the new informal meeting requirement included in paragraph (2) should further promote negotiated solutions, thus limiting the frequency with which the accelerated process is utilized. It also reduces certain procedural time frames such that a decision as to whether to move forward under the expedited process is made

earlier in the process. These are good and necessary changes, which if implemented, may serve as an added incentive to all parties in a dispute to find a mutually beneficial, negotiated solution to customer-impacting disputes.

11. CompSouth does, however, harbor one significant reservation with regard to the Modified Staff Rule. As noted in previous Comments, CompSouth surmises that the current version of Rule 25-22.0365, F.A.C., has been underutilized due, in all likelihood, to the fact that the 120-day process is simply not sufficiently expeditious to address service-impacting disputes; thus, the dispute is either eventually resolved (fairly or not) between the carriers involved, or the customer is lost. As suggested before, CompSouth believes a more accelerated, 60-day process would provide a viable option for seeking resolution of a dispute without extended delay that could cause a customer to opt for service with another carrier. The Modified Staff Rule, however, only speaks to a 120-day process and does not expressly recognize that circumstances may arise for which a shorter process, in total, is more appropriate.

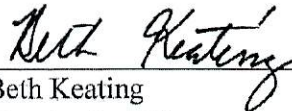
12. As CompSouth has emphasized before, the Rule, whether as currently written or amended, may be utilized by all carriers and can provide a critical avenue for addressing inter-carrier disputes that impair service to customers. The real benefits of this Rule, along with the amendments proposed over the course of this proceeding, are to ensure that customers are: 1) not harmed when caught in the middle of a carrier dispute; and 2) able to take full advantage of the competitive telecommunications market as contemplated by both Congress and the Florida Legislature. It cannot be over emphasize that, in these prolonged challenging economic times, businesses, particularly small businesses, can ill-afford any situation that impacts their ability to communicate with their customers and run their business operations.

13. CompSouth therefore proposes a limited amendment to the Modified Staff Rule in order to address the concern that the Modified Staff Rule does not specifically recognize that a proceeding shorter than 120-days may, in certain circumstances, be appropriate. As reflected in context (highlighted) in Attachment A, CompSouth asks that Paragraph 11 of the Modified Staff Rule be adjusted to specifically recognize that the Prehearing Officer assigned may reach a determination, based upon the information provided, that the facts of the situation at hand call for a proceeding of less than 120 days. This modification would be consistent with Paragraphs (8) and (9) of the Rule. Moreover, it would be consistent with, and reflective of, the suggestion of other stakeholders that the Prehearing Officer is authorized to establish a more expedited time frame.¹ CompSouth strongly urges that this change to the Modified Staff Rule be incorporated to more clearly and definitively recognize the Prehearing Officer's authority in this regard.

III. CONCLUSION

14. In sum, CompSouth is amenable to the changes represented by the Modified Staff Rule, but urges that the Commission incorporate the additional change discussed herein. Thereafter, CompSouth would support that the Modified Staff Rule, as amended, be considered for adoption.

Respectfully submitted this 21st day of January, 2014, by:



Beth Keating
Gunster Law Firm
215 South Monroe Street
Suite 601
Tallahassee, FL 32301
On behalf of the Competitive Carriers of the South, Inc.

¹ For instance, see Comments of AT&T Florida, September 19, 2013, at page 3; Post Workshop Comments of Verizon Florida LLC, September 19, 2013, at page 2; and CenturyLink's Post-Workshop Comments, September 19, 2013, at page 1 and fn. 2.

ATTACHMENT A

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 7 ~~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;~~

~~1.2.~~ 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;

~~2.3.~~ 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 factors provided in Section ~~364.16(6)~~ 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.

(9) 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;

(b) Day ~~7~~ 14 – deadline for filing a motion to dismiss, and a response to the request for expedited proceeding;

(c) Day ~~14~~ 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, unless the Prehearing Officer decides that a more expedited schedule is appropriate under paragraphs (8) and (9).

(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) Service of all documents on the parties shall be by e-mail, ~~faesimile~~ 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 faesimile.~~ Filing of all documents with the Commission shall be by hand delivery, overnight mail or any method of electronic filing authorized by the Commission.

(14) 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.

(15) 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.

Rulemaking Authority 350.127(2), 364.16(6) FS. Law Implemented 364.16(6) FS. History—New 8-19-04, Amended _____.