

STATE OF FLORIDA

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# Public Service Commission

May 14, 2014

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COMMISSION  
CLERK

Kenneth J. Plante, Coordinator  
Joint Administrative Procedures Committee  
Room 680, Pepper Building  
111 W. Madison Street  
Tallahassee, FL 32399-1400

RE: Docket No. 120208-TX; Rule 25-22.0365, Florida Administrative Code.

Dear Mr. Plante:

Enclosed are the following materials concerning the above referenced proposed rule:


1. A copy of the proposed rule.
2. A copy of the F.A.R. notice.
3. A statement of facts and circumstances justifying the proposed rule.
4. A federal standards statement.
5. Statement of Estimated Regulatory Costs for the rule.

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JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE

Mr. Kenneth J. Plante  
May 14, 2014  
Page 2

If there are any questions with respect to these rules, please do not hesitate to call me at 413-6214.

Sincerely,

  
Pamela H. Page  
Senior Attorney

Enclosures  
cc: Office of Commission Clerk

1 **25-22.0365 Expedited Dispute Resolution Process for Telecommunications Companies.**

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

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

6 (3) If the companies are unable to resolve their dispute themselves, the complainant company  
7 must, prior to filing a request under subsection (5), notify Commission staff of the dispute and  
8 request that Commission staff conduct an informal meeting. The informal meeting shall be  
9 conducted within 7 days of the request for the purpose of discussing the matters in dispute, the  
10 positions of the parties, possible resolution of the dispute, any immediate effect on customers’  
11 ability to receive service, anticipated discovery needs, and case scheduling.

12 ~~(4)~~(3) To initiate the expedited dispute resolution process, the complainant company must file  
13 with the Commission a request for expedited proceeding, direct testimony, and exhibits, and  
14 must simultaneously serve the filing on the other company involved in the dispute. The  
15 request for expedited proceeding is in lieu of the petition required by Rule 28-106.201, F.A.C.

16 ~~(5)~~(4) The request for expedited proceeding must include:

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

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

21 (c) The relief requested;

22 (d) A statement ~~attesting to the fact~~ that the complainant company attempted to resolve the  
23 dispute informally and the dispute is not otherwise governed by dispute resolution provisions  
24 contained in the parties’ relevant interconnection agreement; and

25 (e) An explanation of why the use of this expedited process is appropriate. The explanation of

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions  
from existing law.

1 why use of the expedited process is appropriate shall include a discussion of the following:

2 1. The number and complexity of the issues;

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

4 3. The topics on which the company plans to conduct discovery, including a description of the

5 nature and quantity of information expected to be exchanged;

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

7 5. Any other matter the company believes relevant to determining whether the dispute is one

8 suited for an expedited proceeding.

9 ~~(6)(5)~~ Any petition for intervention shall provide the information required by paragraphs

10 ~~(5)(4)(a)-(c)~~ and (e) as it applies to the intervenor.

11 ~~(7)(6)~~ The request for expedited proceeding shall be dismissed if it does not substantially

12 comply with the requirements of subsections (2), (3), ~~and (4), and (5)~~, above. The first

13 dismissal shall be without prejudice.

14 ~~(8)(7)~~ The respondent company may file a response to the request. The response must be filed

15 within 7 14 days of the filing of the request for expedited proceeding.

16 (a) The response shall include the name, address, telephone number, facsimile number and e-

17 mail address of the respondent and the respondent's representative to be served, if different

18 from the respondent.

19 (b) The response to the request may include any information that the company believes will

20 help the Prehearing Officer decide whether use of the expedited dispute resolution process is

21 appropriate. Such information includes, but is not limited to:

22 ~~1. The respondent's willingness to participate in this process;~~

23 1.2. Statement of the specific issue or issues to be litigated from the respondent's perspective,

24 and the respondent's position on the issue or issues; and

25 ~~2.3.~~ A discussion of the topics listed in subparagraphs ~~(5)(4)(b)-(e)~~1.-5. above.

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1 ~~(9)(8)~~ No sooner than 7 14 days after the filing of the request for expedited proceeding, but  
2 promptly thereafter, the Prehearing Officer will decide whether use of the expedited  
3 proceeding is appropriate. The decision will be based on the factors provided in Section  
4 ~~364.16(6)~~ 364.058(3), F.S., the materials initially filed by the complainant company and, if a  
5 response is filed, the materials included in the response.

6 ~~(10)(9)~~ Unless otherwise provided by order of the Prehearing Officer, based on the unique  
7 circumstances of the case, the schedule for each expedited case will be as follows:

8 (a) Day 0 – request for expedited proceeding, direct testimony and exhibits are filed;  
9 (b) Day 7 14 – deadline for filing a motion to dismiss, and a response to the request for  
10 expedited proceeding;  
11 (c) Day 14 ~~21~~ – deadline for filing a response to the motion to dismiss, if one is filed; ~~and~~,  
12 (d) Day 21 - deadline for filing petitions to intervene, and intervenor testimony and exhibits;  
13 (e) ~~(d)~~ Day 42 – deadline for the Commission staff to file testimony; and  
14 (f) ~~(e)~~ Day 56 – deadline for the respondent to file rebuttal testimony.

15 ~~(11)(10)~~ The Prehearing Officer shall decide whether post-hearing briefs will be filed or if  
16 closing arguments will be made in lieu of post-hearing briefs. In making this decision the  
17 Prehearing Officer will consider such things as the number of parties, number of issues,  
18 complexity of issues, preferences of the parties, and the amount of testimony stipulated into  
19 the record.

20 ~~(12)(11)~~ The Commission shall make a decision on the dispute within 120 days of the  
21 complainant company’s filing of the request for expedited proceeding, direct testimony and  
22 exhibits.

23 ~~(13)(12)~~ Responses to discovery requests shall be made within 15 days of service of the  
24 discovery requests, unless the Prehearing Officer decides otherwise based on the unique  
25 circumstances of the case.

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1 ~~(14)~~(13) Service of all documents on the parties shall be by e-mail, ~~facsimile~~ or hand delivery.  
2 ~~An additional copy shall be furnished by hand delivery, overnight mail or U.S. mail if the~~  
3 ~~initial service was by e-mail or facsimile.~~ Filing of all documents with the Commission shall  
4 be by hand delivery, overnight mail or any method of electronic filing authorized by the  
5 Commission.  
6 ~~(15)~~(14) The applicability of this rule to the proceeding will be reassessed as factors affecting  
7 the complexity of the case, number of issues, or number of parties change during the  
8 proceeding.  
9 ~~(16)~~(15) Once the Prehearing Officer has determined that use of an expedited proceeding is  
10 appropriate, nothing in this rule shall prevent the Prehearing Officer from making a later  
11 determination that the case is no longer appropriate for an expedited proceeding based on the  
12 number of parties, number of issues or the complexity of the issues. Nothing in this rule shall  
13 prevent the Commission from initiating an expedited proceeding on its own motion.  
14 *Rulemaking Authority 350.127(2), 364.16(6) FS. Law Implemented 364.16(6) FS. History—*  
15 *New 8-19-04, Amended \_\_\_\_\_.*  
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CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

## Notice of Proposed Rule

### **PUBLIC SERVICE COMMISSION**

RULE NO.: RULE TITLE:

25-22.0365 Expedited Dispute Resolution Process for Telecommunications Companies

PURPOSE AND EFFECT: To amend the rule to make the expedited dispute resolution process for telecommunications companies more usable by the companies to resolve disputes.

Docket No. 120208-TX

SUMMARY: The rule and Section 364.16(6), F.S., require the Commission to make a decision on the dispute within 120 days. The amendments to the rule provide that, absent resolving the dispute themselves, a party is required to request an informal meeting with staff to be conducted within 7 days of the request for this meeting and before filing the petition for expedited process. The amendments shorten time frames in the expedited process, but the 120 day resolution date is the same.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the Agency.

The SERC examined the factors required by Section 120.541(2)(c), F.S., and concluded that the rule amendments will not have an adverse impact on economic growth, business competitiveness, or small business.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: based upon the information contained in the SERC.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 350.127(2), 364.16(6) FS.

LAW IMPLEMENTED: 364.16(6) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Pamela Page, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6412, [phpage@psc.state.fl.us](mailto:phpage@psc.state.fl.us)

THE FULL TEXT OF THE PROPOSED RULE IS:

25-22.0365 Expedited Dispute Resolution Process for Telecommunications Companies.

(1) No change.

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

(3) If the companies are unable to resolve their dispute themselves, the complainant company must, prior to filing a request under subsection (5), notify Commission staff of the dispute and request that Commission staff conduct an informal meeting. The informal 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.

(4)(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.

(5)(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) through (c) No change.

(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. through 5. No change.

~~(6)(5)~~ Any petition for intervention shall provide the information required by paragraphs ~~(5)(4)~~(a)-(c) and (e) as it applies to the intervenor.

~~(7)(6)~~ The request for expedited proceeding shall be dismissed if it does not substantially comply with the requirements of subsections (2), (3), ~~and (4), and (5)~~, above. The first dismissal shall be without prejudice.

~~(8)(7)~~ The respondent company may file a response to the request. The response must be filed within 7 44 days of the filing of the request for expedited proceeding.

(a) through (b) No change.

~~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; and

~~2.3.~~ A discussion of the topics listed in subparagraphs ~~(5)(4)~~(b)-(e)1.-5. above.

~~(9)(8)~~ No sooner than 7 44 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.

~~(10)(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) No change.

(b) Day 7 44 – deadline for filing a motion to dismiss, and a response to the request for expedited proceeding;

(c) Day 14 24 – deadline for filing a response to the motion to dismiss, if one is filed; and;

~~(d)~~ Day 21 – deadline for filing petitions to intervene, and intervenor testimony and exhibits;

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

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

~~(11)(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.

~~(12)(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.

~~(13)(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.

~~(14)(13)~~ 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.

~~(15)(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.

~~(16)(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 \_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Competitive Carriers of the South, Inc.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission



DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 9, 2014

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 40, Number 61, March  
28, 2014

STATEMENT OF FACTS AND CIRCUMSTANCES  
JUSTIFYING RULE

Rule 25-22.0365 is amended to make the expedited dispute resolution process for telecommunications companies more usable by the companies to resolve disputes. In its Petition to Initiate Rulemaking, Competitive Carriers of the South, Inc. sought amendments to the rule to make this expedited process more efficient and effective. The rule is amended to now require a meeting between staff and the parties prior to invoking the process, and shorten the time frames currently in the rule. The 120 day time frame for resolution of the dispute remains unchanged from the current rule.

STATEMENT ON FEDERAL STANDARDS

There are no federal standards for this rule.



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

### -M-E-M-O-R-A-N-D-U-M-

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**DATE:** March 14, 2014

**TO:** Kathryn Cowdery, Senior Attorney, Office of the General Counsel  
Pamela H. Page, Senior Attorney, Office of the General Counsel

**FROM:** Laura V. King, Economic Analyst, Division of Economics *LVK*

**RE:** Statement of Estimated Regulatory Costs (SERC) for Proposed Amendments to Rule 25-22.0365, Florida Administrative Code (F.A.C.), Expedited Dispute Resolution Process for Telecommunications Companies

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Rule 25-22.0365, F.A.C., Expedited Dispute Resolution Process for Telecommunications Companies, establishes an expedited process for resolution of disputes between telecommunications companies, as required by Section 364.16(6), Florida Statutes. On July 31, 2012, the Competitive Carriers of the South, Inc. (CompSouth) filed a petition to revise the rule.<sup>1</sup> CompSouth believes the current rule is not as "customer friendly" as it could be noting, when a customer is without service or has impaired service, as a result of an intercarrier dispute, the 120 day timeframe in the current rule is not a reasonable time for adjudication.

The current rule requires that, to be considered for an expedited proceeding, the companies involved attempt to resolve the dispute informally. The amended rule would require parties that do not resolve their dispute independently, prior to filing for expedited resolution, request Commission staff conduct an informal meeting. The meeting would be conducted within 7 days of the request. The amended rule also requires a statement attesting to the fact that the dispute is not otherwise governed by the dispute resolution provisions contained in the parties relevant interconnection agreement. Last, some of the scheduling deadlines contained in the current rule were modified; however, the overall timeframe for the Commission to make a decision on the dispute remains within 120 days of the complainant company's filing of the request for an expedited proceeding.

In order to prepare the attached SERC, staff sent a data request and a copy of the draft rule to all telecommunications companies specifically asking that they provide information regarding direct or indirect adverse economic impacts, if any, that they believe will result if the rule as drafted is adopted. Only CompSouth responded to this request stating that the economic impact, if any, of the proposed changes is difficult, at best, to quantify. However, they also note that the proposed language regarding the informal meeting conducted by Commission staff could provide an avenue for more quickly resolving intercarrier disputes, which in some cases, many reduce litigation costs.

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<sup>1</sup> See 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.

FLORIDA PUBLIC SERVICE COMMISSION  
STATEMENT OF ESTIMATED REGULATORY COSTS  
Chapter 25-22.0365, F.A.C.

1. Will the proposed rule have an adverse impact on small business?  
[120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes

No

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes

No

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)1, F.S.]

Economic growth

Yes  No

Private-sector job creation or employment

Yes  No

Private-sector investment

Yes  No

(2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets)

Yes  No

Productivity

Yes  No

Innovation

Yes  No

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes

No

Economic Analysis:

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

Compliance with the rule is only an issue for telecommunications companies, as defined in 364.02(13), Florida Statutes, involved in a dispute. There are currently 371 certificated telecommunications companies.

(2) A general description of the types of individuals likely to be affected by the rule.

Incumbent and competitive telecommunications companies.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

None. To be done with the current workload and existing staff.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

None. The rule will only affect the Commission.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

- None
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule.  
[120.541(2)(d), F.S.]

- None. The rule will only affect the Commission
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities:  
[120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

- No adverse impact on small business.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- No impact on small cities or small counties
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful.  
[120.541(2)(f), F.S.]

- None.

Additional Information: A data request and copy of the draft proposed rule was sent to all telecommunications companies and parties to Docket No. 120208-TX specifically requesting that they provide information regarding direct or indirect adverse economic impacts. Only CompSouth responded stating they believe the proposed language in paragraph (2) could provide an avenue for more quickly resolving intercarrier disputes, which in some cases, may reduce litigation costs.

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

- No regulatory alternatives were submitted.
- A regulatory alternative was received from
  - Adopted in its entirety.
  - Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.