

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: May 20, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (STERN)
Division of Competitive Markets and Enforcement (WRIGHT/BULECZA-BANKS)
Division of Economic Regulation (HEWITT)

RE: Docket No. 040269-TP – Proposed adoption of Rule 25-22.0365, F.A.C., Expedited Hearing.

AGENDA: 06/01/04 – Regular Agenda – Rule Proposal – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040269.RCM.DOC

DISCUSSION OF ISSUES

Issue 1: Should the Commission propose new Rule 25-22.0365, Florida Administrative Code, Expedited Dispute Resolution Process for Telecommunications companies?

Recommendation: Yes, the Commission should propose the rule because it is required by Section 364.058(3), Florida Statutes. (Stern)

Staff Analysis: The proposed rule implements Section 364.058(3), Florida Statutes, which was enacted in the 2003 legislative session. That new section of the Florida Statutes states:

(3) The commission shall implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies. The process implemented by the commission shall, to the greatest extent feasible, minimize the time necessary to reach a decision on a dispute. The commission may limit the use of the expedited process based on the number of parties, the number of issues,

or the complexity of the issues. For any proceeding conducted pursuant to the expedited process, the commission shall make its determination within 120 days after a petition is filed or a motion is made. The commission shall adopt rules to implement this subsection.

The proposed rule is found in Attachment A to this recommendation. It is based on a model expedited hearing process developed about two years ago by incumbent local exchange companies (ILECs), competitive local exchange companies (CLECs), and Commission staff. This group, referred to as the "collaborative", has been meeting to informally resolve disputes between ILECs and CLECs. The collaborative identified a need for an expedited hearing process for disputes that could not be resolved informally but were relatively simple and straightforward.

The notice of proposed rule development was published in the March 5, 2004 edition of the Florida Administrative Weekly (FAW). A workshop was held on March 29, 2004, and was attended by representatives of BellSouth, Verizon, Sprint, MCI, Supra and AT&T. The draft of the rule published in the FAW differed from that proposed here in that the FAW draft made the expedited process available to disputes involving only two parties. The reason was that limiting the number of parties would keep the process streamlined by limiting such things as the number of issues, the number of positions that could be taken on an issue, the volume of documents produced during discovery, and the number of witnesses. In addition, because the process is new, staff thought it best to limit its availability until the Commission had some experience implementing it.

Through the workshop the two party restriction was eliminated. Some of the CLECs contended that an increased number of parties did not necessarily correlate directly with increased number of issues or number of positions on an issue. They believed that the complexity of the issues was the most critical factor. They also noted that the statute gave the Commission the discretion to discontinue the hearing under the expedited schedule if the issues became too complex. Finally, they pointed out that allowing intervention is administratively efficient when one set of issues, that are simple, affects many companies.

The ILECs were in favor of limiting the number of parties. They pointed out that if the majority of CLECs intervened in a docket, even a simple one, that the proceeding should probably be handled as a generic docket. They also contended that allowing numerous parties would disproportionately burden the ILECs. First, they noted that most of the proceedings brought under the new statute would be initiated by CLECs against an ILEC. Second, they noted that because ILECs and CLECs are organized differently, it is likely that a one-witness issue for a CLEC could require more than one witness for an ILEC. A final objection raised by the ILECs was that as the number of parties increases, the number of witnesses and the amount of testimony increases, which increases the time needed to process a case and makes the procedure unwieldy.

The workshop recessed to allow the companies to see if they could reach a compromise. They did develop some revised language which allows more than two parties, and is embodied in the text of the rule proposed here. The ILECs noted, however, that they were not fully in favor of this proposed rule. Rather, they indicated that they would take the issue under further consideration, and that they may argue against it when the rule is proposed.

STATUTORY AUTHORITY

Section 350.127(2), Florida Statutes, authorizes the Commission to implement the provisions of law that confer duties upon it. In addition, Section 364.058(3), Florida Statutes, directs the Commission to adopt rules to implement that section.

STATEMENT OF ESTIMATED REGULATORY COSTS

The proposed rule should make the dispute process more efficient and less time consuming, and thus less costly for utilities. It should also facilitate more competitive choices for customers. The Commission would benefit by the resolution of disputes in a more timely manner, but staff's workload may be heavier given the requirement to complete the hearing process in 120 days. The total cost savings are unknown.

The SERC is in Attachment B to this recommendation.

Docket No. 040269-TP

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if no comments or requests for hearing are filed, the rule as proposed should be filed for adoption with the Secretary of State and the docket should be closed. (Stern)

STAFF ANALYSIS: Unless comments or requests for hearing are filed, the rule as proposed may be filed for adoption with the Secretary of State without further action by the Commission. The docket may then be closed.

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.

(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, Florida Administrative Code.

(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,

(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 paragraphs (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 (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 364.058(3), Florida Statutes, 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 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.

(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, 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.

(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.

Specific Authority: 350.127(2), 364.058(3), F.S.,

Law Implemented: 364.058, F.S.

History: New _____.