BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Quincy Telephone Company d/b/a TDS Telecom/Quincy, Smart City Telecommunications LLC d/b/a Smart City Telecom, GTC, Inc. d/b/a Fairpoint Communications, Northeast Florida Telephone Company d/b/a NEFCOM, ITS Telecommunications Systems, Inc., and Frontier Communications of the South, LLC, for waiver of requirements of Rules 25-4.0185, 25-4.066, 25-4.070, 25-4.073, and 25-4.110(6), F.A.C., relating to service quality or in the alternative the waiver of Rules 25-4.0185, F.A.C., relating to service quality reporting, and 25-4.073, F.A.C., relating to answer time requirements.	DOCKET NO. 100288-TL ORDER NO. PSC-10-0628-PAA-TL ISSUED: October 21, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
ART GRAHAM
RONALD A. BRISÉ

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING AMENDED PETITION FOR RULE WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Background

Quincy Telephone Company d/b/a TDS Telecom/Quincy, Smart City Telecommunications LLC d/b/a Smart City Telecom, GTC, Inc. d/b/a FairPoint Communications, Northeast Florida Telephone Company d/b/a NEFCOM, ITS Telecommunications Systems, Inc., and Frontier Communications of the South, LLC, are classified as small local exchange telecommunications companies (LECs), having had fewer than

100,000 access lines in service on the dates they were certificated by the Commission. They are hereinafter referred to as "the Small LECs."

On May 13, 2010, the Small LECs filed a petition for waiver of the requirements of Rules 25-4.0185, 25-4.066, 25-4.070, 25-4.073 and 25-4.110(6), F.A.C., relating to service quality, or in the alternative, a waiver of Rule 25-4.0185, F.A.C., relating to service quality reporting, and Rule 25-4.073, F.A.C., relating to answer times requirements.[1] By way of a Staff Data Request dated June 1, 2010, our staff requested, among other things, that the Small LECs further demonstrate how the purpose of the statutes underlying those rules would be or had been achieved by other means if we were to grant the rule waiver request. The Small LECs requested to meet regarding staff's concerns, and a meeting was held on June 24, 2010, to discuss the matter. In attendance were staff, representatives of the Small LECs, and a representative of the Office of Public Counsel.

On July 19, 2010, upon consideration of the concerns raised in the Staff Data Request and at the June 24, 2010 meeting, the Small LECs filed an amended petition for rule waiver, narrowing their request to a request for waiver of the requirements of Rule 25-4.073, F.A.C., relating to answer time requirements, and Rule 25-4.0185, F.A.C., relating to service quality reports. Notice of the amended petition was published in the Florida Administrative Weekly on August 6, 2010. The comment period expired on August 20, 2010, and no comments were received.

This Order addresses the Small LECs' amended petition for rule waiver. We have jurisdiction pursuant to sections 364.01(4), 364.03, 364.17, and 364.183(1), Florida Statutes (F.S.), as well as section 120.542, F.S.

Amended Petition

Rule 25-4.073, F.A.C., entitled Answering Time, contains call answering time requirements for telephone utilities to answer basic customer calls to repair offices and requires that each company report its answer time performance pursuant to Rule 25-4.0185, F.A.C. Rule 25-4.0185, F.A.C., entitled Periodic Reports, requires that the Small LECs file reports with this Commission demonstrating their level of compliance with quality of service standards, by filing the information required by Commission Form PSC/SSC 28 (10/09), entitled "Engineering Data Requirements," on a semiannual basis.

The Small LECs point out that in 2009, the Florida Legislature amended Chapter 364, F.S., by limiting our jurisdiction over the service quality of an incumbent local exchange company (ILEC) to quality of service for basic local telecommunications service.[2] Also in 2009,

[1] Notice of the petition was published in the Florida Administrative Weekly on May 28, 2010. The comment period expired on June 11, 2010, and no comments were received.

[2] Section 364.02(1), F.S., defines "basic local telecommunications service" as voice-grade, single-line, residential local exchange service that provides dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing.

we limited the application of several service quality rules to basic local telecommunications service as defined by Chapter 364, F.S. Thereafter, beginning in January 2010, the amended rules require the ILECs to begin reporting service quality results under Rule 25-4.0185, F.A.C., for basic customers only. By Order No. PSC-10-0077-PAA-TL,[3] we interpreted "basic local telecommunications service" to mean a single residential line with no presubscribed interexchange carrier, consistent with section 364.02(1), F.S.

The Small LECs state that absent a waiver, the amended rules, together with the clarified definition of "basic local telecommunications service," will require them to make Florida-specific modifications to internal operating systems or perform manual audits to collect and report basic-only data for service installation and repair. With regard to answer times, the Small LECs use integrated voice response systems that allow customers to transfer to a live attendant. The call routing systems used by the Small LECs do not distinguish between residential basic and non-basic customers, and they are not aware of a cost-effective solution to separate calls between residential basic and non-basic customers.

The Small LECs advise that as of January 31, 2010, they had the following numbers of residential access lines that meet the new definition of a basic service: TDS Telecom, 134; Smart City Telecom, 249; FairPoint, 868; NEFCOM, 11; ITS, 93; and Frontier, approximately 23. As a group, approximately 1,295 of the Small LECs' total residential access lines (less than 2.2%) qualify as basic local telecommunications service subject to our quality of service rules. Moreover, the Small LECs state that because the number of their basic local residential service customers is small, the level of service activity for these customers is also low. The Small LECs provided the results of a manual audit that they performed of residential installations and repairs from September – November 2009, showing a low level of service activity for these customers. The Small LECs state that the number of basic local telecommunications customers and the low level of service activity for these customers do not justify modifying their call answering processes and data gathering systems to enable them to ascertain whether our answer time rule has been met for basic local telecommunications customers or to prepare the periodic service quality reports that are required by rule.

I. Requirements of Section 120.542(2), F.S.

Section 120.542(2), F.S., provides a two-pronged test for determining when waivers and variances from agency rules shall be granted, as follows:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the

[3] Issued February 10, 2010, in Docket No. 090641-TL, In Re: Petition for modification of Service Guarantee Program by BellSouth Telecommunications, Inc. d/b/a AT&T Florida, and consummated by Order No. PSC-10-0132-CO-TL, issued March 5, 2010.

variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

A. The Purpose of the Underlying Statutes

The purpose of section 364.01(4), F.S., underlying Rules 25-4.073 and 25-4.0185, F.A.C., is to ensure that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices and to encourage competition through flexible regulatory treatment among telecommunications service providers. The purpose of section 364.03, F.S., underlying both rules, is to assure fair, just and reasonable rates and service and the provision and maintenance of suitable and adequate telecommunications facilities and connections for telecommunications services.

With respect to the request for waiver of Rule 25-4.073, F.A.C., the Small LECs state that the goal of reasonable customer service will be achieved through the effect of competitive forces, and that section 364.01(4), F.S., empowers this Commission to facilitate the transition to a more competitive telecommunications marketplace. The Small LECs state they are subject to an increasing amount of competition from wireless and VOIP providers using a cable platform, and they state that these competitive pressures provide a real incentive for them to provide quality service, including answering customer calls in a timely manner. Moreover, the Small LECs are not aware of any statute specifying that LECs answer phone calls from customers within a specific amount of time or directing us to adopt a rule governing answer time.

On August 16, 2010, the Small LECs filed their response to an amended Staff Data Request dated August 2, 2010, for additional information regarding the amended petition. In that response, the Small LECs state that under the amended petition, we would monitor customer service by considering the number of customer complaints registered against each of the Small LECs, and that reasonable customer service would continue to be measured relative to our service quality rules, except for answer time. The Small LECs note that they do not seek waiver of the requirements for installation or repair under the amended petition, and they recognize that providing quality service to their customers is an important factor in a competitive marketplace.

With respect to the request for waiver of Rule 25-4.0185, F.A.C., the Small LECs propose that in lieu of filing periodic reports, customer service issues be addressed on an individual customer basis if and when a complaint is filed. The Small LECs believe that this approach will achieve the statutory goal of reasonable customer service without the expense associated with preparing and filing periodic reports. The Small LECs state that the level of customer complaints filed with this Commission is very low and demonstrates that operating on a case-by-case, individual complaint basis is a reasonable alternative to periodic reporting. For the period from January 1, 2009 to December 31, 2009, the level of customer complaints in total, whether founded or unfounded, filed with this Commission against each of the Small LECs is as follows: TDS Telecom, 3; Smart City Telecom, 0; FairPoint, 8; NEFCOM, 1; ITS, 0; and Frontier, 0. The Small LECs believe that the reporting requirements in the rule can be replaced

with a commitment to work with us on an individual customer complaint basis, thereby achieving the underlying purpose of the statutes that form the basis for the reporting rules. Moreover, they do not believe that reporting combined residential basic and non-basic customers will provide us with any relevant information as to whether they are meeting the quality of service standards for the lines subject to our jurisdiction.

B. Substantial Hardship and Principles of Fairness

The Small LECs assert that application of the answer time and reporting rules to the very small number of customers receiving basic local telecommunications service would be a substantial hardship because compliance would require Florida-specific modifications to internal operating systems in order to distinguish between residential basic and non-basic customers, or in the alternative, would require a manual review of potentially thousands of work orders to identify those that may fall under the definition of basic service.[4] Since fewer than 2.2% of residential customers are classified as "basic," the Small LECs do not believe that the costs associated with modifying operating systems or conducting manual audits to prepare periodic reports is cost-effective. Moreover, the Small LECs believe that the low level of service activity for these customers does not justify modifying their call answering processes and data gathering systems to enable them to ascertain whether our answer time rule has been met, or to prepare the periodic service quality reports required by rule. The Small LECs believe that requiring them to comply with these rules for the very small number of basic service customers they serve would impose a financial burden on them relative to the amount of useful information that doing so will yield.

Moreover, in their response to the amended Staff Data Request, the Small LECs state that they will be able to respond to staff data requests concerning new service orders and troubles for basic residential customers, but that in most cases required data collection will be done manually on an as needed basis and will be time-consuming and expensive. They suggest that the need for such data requests should be limited to audits consistent with Rule 25-4.210, F.A.C., or if there is an increase in basic customer service complaints such that we believe further review is necessary.

II. Conclusion

We note that section 364.052(2)(b), F.S., requires this Commission to regulate the small LECs differently from the large LECs. That section requires us to adopt, by rule, streamlined procedures for regulating the small LECs, and states that "[t]hese procedures shall minimize the burdens of regulation with regard to audits, investigations, service standards, cost studies, reports, and other matters, and the commission shall establish, by rule, only those procedures that are cost-justified and are in the public interest so that universal service may be promoted." We

[4] The Small LECs note that in Docket No. 090550-TL, Verizon has filed for a temporary variance from Rule 25-4.073, F.A.C., until such time as they are able to make system modifications that they estimate to be $500,000. Although the Small LECs have not done a financial analysis to implement a similar solution, they believe that there is no possibility of cost justifying system changes that would impact only 1,295 basic customers who may or may not ever call the local business office.

find that granting the Small LECs' petition for waiver of the requirements of Rules 25-4.073 and 25-4.0185, F.A.C., comports with the Legislature's intent that the small LECs be afforded regulation different from that which applies to the large LECs.

Rule 25-4.210, F.A.C., implements section 364.052(2)(b), F.S., and, among other things, prohibits us from conducting a service evaluation of a small LEC more than once every four years, unless there is a compelling reason to do so. We find that granting the subject rule waiver request will further streamline the regulation of service standards for these Small LECs and will thereby also promote universal service. Approving the waiver does not diminish our authority or ability to investigate or review any one of the Small LECs' performance should circumstances dictate; i.e., by way of data requests regarding installation and repair.

We hereby grant the Small LECs' amended petition for waiver of the requirements of Rules 25-4.073 and 25-4.0185, F.A.C., because they have demonstrated that the purpose of the underlying statutes will be achieved by other means, and that application of these rules would create a substantial hardship.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that the Small LECs' Amended Petition for Rule Waiver is granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of October, 2010.

ANN COLE
Commission Clerk

By: _____
Dorothy E. Menasco
Chief Deputy Commission Clerk

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 11, 2010.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.