

120208-TX



Writer's E-Mail Address: MFeil@gunster.com

July 31, 2012

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

Re: Docket No. 120208-TX: Petition of the Competitive Carriers of the South, Inc., to initiate rulemaking to revise and amend portions of Rule 25-22.0365, Florida Administrative Code

Dear Ms. Cole:

On behalf of Competitive Carriers of the South, Inc., please find attached to be filed **in a new docket** the Petition to Initiate Rulemaking to Revise and Amend Portions of Rule 25-22.0365, Florida Administrative Code.

An original and seven copies of the Petition are enclosed, along with a diskette containing a PDF version of the Petition.

If you have any questions, please advise me.

Sincerely,

Matthew J. Feil

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Enclosure

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Competitive Carriers of the } DOCKET NO. 120208-TX
South, Inc., to initiate rulemaking to revise and }
amend portions of Rule 25-22.0365, Florida } FILED: July 31, 2012
Administrative Code. }
_____ }

PETITION TO INITIATE RULEMAKING

I. Introduction and Background

In accordance with Section 120.54(7), Florida Statutes (“F.S.”) and Rule 28-103.006 and 25-22.017(2), Florida Administrative Code (“F.A.C.”), the Competitive Carriers of the South, Inc. (“CompSouth”) submits this Petition requesting that the Florida Public Service Commission (“FPSC” or “Commission”) initiate rulemaking to amend Rule 25-22.0365, F.A.C., (the “Expedited Dispute Resolution Rule” or “the Rule”) to revise portions of the Rule to enable quicker resolution of cases where a consumer is without service or suffers impaired service as a result of a dispute between telecommunications carriers.

The current Rule contemplates an expedited hearing schedule and a Commission decision within 120 days of a complaint being filed by one carrier against another. But when a customer is “caught in the middle” of a dispute between two or more carriers, and the customer suffers an interruption of service or impeded service condition, 120 days is too long for resolution. In such cases, the customer, understandably, tends to be very involved in finding a solution and will do whatever he/she can to solve the problem immediately. Often, that will mean the customer will take service from whichever provider can expeditiously supply a substitute service, regardless of which carrier may have been the customer’s first choice and regardless of which carrier is to blame for the customer’s

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problem. Needless to say, situations like this are not only untenable for the customers but are also problematic for the carriers.

Therefore, CompSouth now proposes that Rule 25-22.0365, F.A.C., be amended to facilitate quicker resolution of inter-carrier disputes when a customer is without service or suffers impeded service. CompSouth proposes that the revised Rule incorporate new provisions which will:

- Expressly encourage parties to resolve disputes on their own;
- Leverage the Commission's Telecommunications Office Staff to have a joint meeting with the parties early on to bring the process into focus and facilitate solutions;
- Shorten the adjudication process in cases where a customer suffers an out-of-service or impaired service condition as a result of a carrier dispute.

1. The name, address, telephone number and email addresses for the Petitioner are:

Competitive Carriers of the South, Inc.
Garry Sharp, Executive Director
P.O. Box 158303
Nashville, TN 37215
(615) 665-8519
glsharp@comcast.net

Competitive Carriers of the South, Inc.
Carolyn Ridley, President
2078 Quail Run Drive
Bowling Green, KY 42104
(615) 584-7372
Carolyn.ridley@twtelecom.com

2. The contact information for the person to whom notices, orders and correspondence regarding this Petition are to be sent is:

Matthew Feil
Gunster Law Firm
215 South Monroe Street, Suite 601
Tallahassee, Florida 32301-1804
(850) 521-1708
mfeil@gunster.com

3. CompSouth is a competitive local exchange carrier (“CLEC”) trade association representing CLEC companies, and others affiliated with the CLEC industry in the southeastern United States, including Florida. Each of CompSouth’s CLEC members is subject to the jurisdiction of the Commission prescribed by Chapter 364, F.S, and, specifically, as it concerns the instant Petition, each CLEC is a “telecommunications company” defined by Section 364.02(14), F.S. (2012) and would be subject to various provisions of Section 364.16, F.S (2012). The substantial interests of the CLEC members of CompSouth are thus directly affected by Rule 25-22.0365, F.A.C., and will likewise be affected by the Commission’s disposition of this Petition in that the CLEC’s ability to promptly resolve disputes with other carriers will be determined.

4. Rule 25-22.0364, F.A.C., applies directly to CompSouth’s CLEC members, and CompSouth meets the definition of “person” in Section 120.54(7), F.S., and defined in Section 120.52(13), F.S. CompSouth submits this Petition on behalf of its member CLECs¹ who would otherwise have standing to Petition the Commission in their own right. Furthermore, the relief requested herein does not require the participation of the individual members of CompSouth and is consistent with and germane to CompSouth’s

¹ CompSouth’s CLEC members and their CLEC certificate numbers are as follows: Access Point, Inc., No. 5622; Birch Communications, Inc., No. 7130; Cbeyond Communications, LLC, No. 7624; Earthlink Business (DeltaCom, Inc. d/b/a Earthlink Business, No. 4764, and Saturn Telecommunication Services, LLC, No. 8251); Level 3 Communications, LLC, No. 5725; MegaPath Corporation, No. 5719; tw telecom of florida, l.p., No. 3167; and XO Communications Services, LLC, No. 5648.

organizational purpose. See Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333 (1977) (setting forth a three prong test for associational standing).

5. The Commission is vested with jurisdiction in this matter by Section 364.16(6), F.S. (2102), pursuant to which the Commission has authority to implement rules to administer the expedited resolution process for disputes between telecommunications companies described in that subsection. Subsection (6) of Section 364.16 provides as follows:

(6) Upon petition, the commission may conduct a limited or expedited proceeding to consider and act upon any matter under this section. The commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters. 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 administer this subsection.

6. CompSouth asks that the Commission initiate rulemaking to amend Rule 25-22.0365, F.A.C. CompSouth's proposal, with changes in Legislative format, is set forth in Attachment A and described herein.²

II. Proposed Rule Changes

7. The current Rule has been in place since 2004 and implemented Section 364.058, F.S. (2003). It is important to note that although the Legislature repealed

² In the attached, CompSouth has not proposed a specific date by which the Commission should render a vote in the type of cases described in this petition. See subsection (11) of Attachment A. Commission input on this point is important, but CompSouth believes that the date range should be short and must be consistent with the customer-focused purpose of the changes.

numerous powers of the Commission regarding telecommunications services and companies in the 2011 Session, the Legislature moved the expedited dispute resolution provision, almost word-for-word, from Section 364.058 into new Section 364.16, which addresses a host of inter-carrier issues and the Commission's jurisdiction regarding same.³ Thus, the Legislature recognized that even in the more modern, less-regulated environment for telecommunications carriers, there was still a need for the Commission to have authority over certain inter-carrier disputes AND a need for the Commission to be able to address such disputes on an expedited basis when warranted.

8. Key to CompSouth's request for revisions is that the Rule is not as "customer friendly" as it could be. Though the Commission has lost jurisdiction over almost every aspect of retail services, the Commission can still help consumers through the Commission's authority over certain carrier-to-carrier matters. Moreover, when a carrier's customer is without service or has impaired service as a result of an inter-carrier dispute, 120 days is not a reasonable time frame for adjudication for either the customer or the carriers involved.

9. CompSouth recognizes that the Rule in its current form has been rarely invoked. However, since the Rule was implemented in 2004, most of the inter-carrier disputes that reached the stage of a formal complaint filing with the Commission were not directly customer impacting, and certificated local exchange carriers have, over the years, become fewer in number (though larger in size), and many are familiar with one another and better able to resolve disputes at the trades level. However, disputes between carriers still arise which require the Commission's involvement, and when a customer is without service or has impaired service as a result of a carrier dispute, the customer is not going to wait very

³ See Section 364.058, F.S. (2011) and sections 14 and 22 of Ch. 2011-36, Laws of Florida.

long for the problem to be resolved. The customer will take service from whichever provider can expeditiously supply a substitute service, regardless of which carrier may have been the customer's first choice and regardless of which carrier is to blame for the customer's problem. Further, once an inter-carrier dispute does arise, a carrier may not be motivated to identify and cure the customer's problem (particularly if it impacts another carrier's customer), may blame the other carrier or may ignore the problem by blaming a down-stream or up-stream provider. Whatever the scenario for an inter-carrier dispute, a customer should not be made to suffer prolonged problems, and when the customer is caught in the middle, the Commission can and should help to solve the problem quickly.

10. As noted above, CompSouth's proposed changes to the Rule would (a) expressly encourage parties to resolve disputes on their own pursuant to any contractual arrangements the parties may have for dispute resolution; and (b) utilize the Commission's Telecommunications Office Staff early on in the dispute process to hold a joint meeting with the parties to bring the process into focus and facilitate solutions; and (c) shorten the adjudication process in cases where it is necessary to do so, such as when a customer suffers an out-of-service or impaired service condition as a result of a carrier dispute.

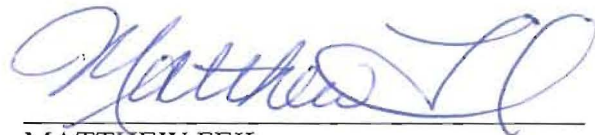
III. FPSC Has Authority to Implement Requested Changes

11. Section 364.16(6), Florida Statutes (2012), permits the Commission to implement rules establishing an expedited adjudication process for inter-carrier disputes. The proposed changes are consistent with this provision of the law, consistent with Chapters 120, 350, 364 and due process, and have the added benefit of being customer friendly.

IV. Relief Requested

12. Based on the foregoing, CompSouth respectfully requests that the Commission initiate rulemaking proceedings to consider adoption of CompSouth's proposed amendments to Rule 25-22.0365, F.A.C., as reflected in Attachment A to this Petition, and begin the rule workshop process, as may be necessary and appropriate, to ensure a complete airing of the impacts of the proposed rule changes.

Respectfully submitted this 31st day of July, 2012



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*Attorneys for Competitive Carriers of the South,
Inc.*

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"). For purposes of this rule, an "immediate and negative effect on a customer" includes, but is not necessarily limited to, any out-of-service or any impeded service condition which significantly hinders the customer's ability to utilize the service within design parameters.

(2) To be considered for an expedited proceeding, the companies involved in the dispute must have attempted to resolve their dispute informally and are encouraged to follow applicable terms of any agreements between the companies for dispute resolution.

(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. At least seven days prior to filing the request, the companies shall first conduct an informal meeting with the Commission staff for the purpose of discussing the matters in dispute, the positions of the parties, possible resolution of the dispute, any immediate customer-impacting effects from the dispute, any unique or exigent circumstances for the dispute, anticipated discovery needs, and anticipated case schedule. Any agreements resulting from such informal staff meeting will be in writing and, if deemed necessary by staff, approved by the Commission.

(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 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 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) Disputes with an immediate and negative effect on a customer will be scheduled for hearing and disposition as early as the Commission's calendar will accommodate. Unless otherwise provided by an order of the Prehearing Officer, based on the unique

circumstances of the case, the schedule for all other each-expedited cases 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, and the presence of any immediate and negative effects on a customer.

(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. Cases involving an immediate and negative effect on a customer will be scheduled for hearing and disposition as soon as the Commission's calendar will accommodate, with a goal of a vote on a final Commission decision within - days of the initial dispute filing, even if meeting this goal requires a bench decision and assignment to a panel of two or more commissioners.

(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 presence of any immediate and negative effects on a customer or 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 or -immediate and negative effects on a customer 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, or based on the removal of all immediate and negative effects on a customer. -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) FS. Law Implemented 364.058 FS. History—New 8-19-04, revised.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email this 31st day of July, 2012.

Kathryn Cowdery
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
KCowdery@PSC.STATE.FL.US

By: _____

A handwritten signature in blue ink, appearing to read "Matthew J. Feil", written over a horizontal line.

Matthew J. Feil, Esq.