

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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.

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COMMISSION
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PROCEEDINGS: RULE DEVELOPMENT WORKSHOP

TAKEN AT THE
INSTANCE OF: The Staff of the Florida
Public Service Commission

DATE: Thursday, November 15, 2012

TIME: Commenced at 9:31 a.m.
Concluded at 11:08 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

P R O C E E D I N G S

1
2 **MS. COWDERY:** Good morning. Pursuant to
3 notice, this time and place has been set for a staff
4 rule development workshop in Docket Number 120208-TX on
5 Competitive Carriers of the South's petition to initiate
6 rulemaking to amend Rule 25-22.0365, *Florida*
7 *Administrative Code*, concerning the expedited dispute
8 resolution process for telecommunications companies.

9 I'm Kathryn Cowdery with the Office of General
10 Counsel. Also here on behalf of staff are Beth Salak,
11 Mark Long, Laura King, and Jeff Bates. There are
12 sign-in sheets at the back of the room, and we'd
13 appreciate your signing in so we have a record of who's
14 attended today. And the materials for today's workshop
15 are also at the back of the room. They should be the
16 same ones that you've already received. There haven't
17 been any changes from the notice of development of
18 workshop.

19 If you speak, please identify yourself for the
20 benefit of anyone who may be watching and also for the
21 benefit of the record. Also, be aware that this room
22 will be in use on another matter at 1:00, so we will
23 want to make sure we're done by about noon.

24 Does anyone have any preliminary matters at
25 this time? Okay. Well, we will turn this over to

1 CompSouth to discuss its suggested rule amendments.

2 **MR. FEIL:** Good morning. This is -- I'm Matt
3 Feil with the Gunster law firm here in Tallahassee
4 representing CompSouth. Speaking for CompSouth will be
5 Mr. Greg Darnell with Cbeyond in Atlanta.

6 **MR. DARNELL:** Good morning. As Matt just
7 said, I'm here with CompSouth. My name is Greg Darnell.
8 CompSouth is a group of CLECs that -- competitive local
9 exchange carriers that primarily operate through the
10 purchase of wholesale arrangements with incumbent local
11 exchange carriers.

12 We are here to discuss adding flexibility
13 to -- well, perceived flexibility, giving the Commission
14 discretion in certain cases where disputes between
15 carriers affect end user service.

16 The -- right now we hope this, this request is
17 very simple and noncontroversial in that it really just
18 is intended to provide the Commission with flexibility
19 to, to use thought in reviewing the dispute, saying does
20 this affect an end user? Do we need to act now versus
21 waiting for a perceived or a documented length of time
22 that may exist in a statute or an interconnection
23 agreement before it can act? If it's affecting a
24 customer, there's certain situations where the
25 Commission must -- may need to act now instead of 30,

1 60, 80, 120, 150 days in the future.

2 So that's really just the intent of our rule,
3 rulemaking proceeding was just to, request for
4 rulemaking anyway, is to -- we saw the Commission going
5 through its processes, reviewing all of its rules,
6 where, where it was in changing them and modifying them,
7 saying, well, here's another one that you might want to
8 think about changing.

9 So we thought it was particularly reasonable
10 in certain, certain situations to allow the Commission
11 to have discretion to, to come in between two carriers
12 who are having a dispute to resolve it, help them
13 resolve, resolve a dispute.

14 Basically the current process is set in the
15 rule that says 120 days for the Commission to act. When
16 a carrier's, a carrier dispute is affecting an end user
17 service, in our case they're small businesses, and these
18 small businesses rely on our facilities for not just
19 their telephone service but their way of, their entire
20 business. That could be the death of the business, it
21 could be -- and that is -- 120 days is just far too
22 long.

23 A pizza shop cannot go without its phone,
24 without its internet service for an hour on a Monday
25 night or a Super Bowl night. You have to act now, those

1 kind of things.

2 So I'm not suggesting that those kind of,
3 those kind of disputes would come before the Commission,
4 but it's more the recurring disputes that, that lead to
5 those problems, and I'll get to that in a few minutes, a
6 few slides.

7 But it's -- now is, now is the time to amend
8 the rule because it is really never a good time to wait
9 until you have that crisis to get into the argument of
10 whether or not you have the flexibility to act or not.
11 And that's what we're trying to address now is that the
12 Commission needs that flexibility in the rules so that
13 in a case where there is a crisis, it can act without
14 having to go through the debate over whether or not
15 they're allowed to act.

16 So there have been a couple of situations in
17 the past where this would have, would have helped
18 things, this kind of flexibility would have helped
19 things. There was a process back in 2009 where Cbeyond
20 filed a complaint. It was concerning switch
21 translations and there was a problem completing calls.

22 There was also a case where, just this year
23 where tw telecom, one of the CompSouth members, also was
24 getting ready to file a complaint about a problem with
25 inbound calling and not being able to -- basically

1 getting dead air, what they call it, they weren't able
2 to hear anything, there was no dial tone, there was no,
3 no calling tone at all. And then there's other network
4 problems that may or may not arise. But, again, this,
5 this rule change is all about giving flexibility and not
6 having a black and white rule that allows the Commission
7 to use its judgment.

8 So there are network issues that could be one
9 carrier complained to another carrier about not being
10 able to -- their customer, their entire customer group
11 could not be able to get calls from a certain location.
12 That's usually a switched translation issue, a call
13 blocking issue. There's network issues where one
14 carrier is saying my customer is out of service, the
15 CLEC is saying my customer is out of service, and the
16 ILEC is saying the customer's service looks fine to us,
17 but the customer is saying my service doesn't work.
18 And -- but both sides are pointing the finger at the
19 other side saying it's your problem, no, it's your
20 problem, but the customer in the meantime is out of
21 service. Those kind of disputes, they happen
22 periodically. They may sometimes arise to the level
23 that we, a carrier might need to bring it to the
24 Commission's attention. Thus far they haven't; only
25 twice that I could find in the last few years that it

1 ever rose to that occasion.

2 But, again, since you're reviewing the rules,
3 why not fix the rule to allow yourself the flexibility
4 now instead of waiting for the case where a carrier
5 comes to you and, with a, with a perceived crisis and
6 the other party may, may point to a rule and say, no,
7 no, we have to negotiate for 120 days before we can ever
8 address this. That doesn't seem logical to me.

9 So that's, that's the foundation for our, our
10 rulemaking proceeding is just provide the Commission the
11 ability to use its judgment in these cases.

12 **MS. COWDERY:** Okay. We are open to any
13 comments, questions about the rule. Do we have any?

14 **MR. HATCH:** I have a lot once (phonetic) the
15 CLEC side is done.

16 **MR. DARNELL:** What was that? I'm sorry.

17 **MR. HATCH:** Yeah. I have a number of comments
18 and questions and so forth, but.

19 **MR. DARNELL:** Well, there is one, one slide
20 left on, on the presentation.

21 **MS. COWDERY:** Oh, I don't have a copy.

22 **MR. DARNELL:** It's basically talking about
23 interconnection agreements. And that slide is there
24 just to show that interconnection agreements in this, in
25 this realm are pretty much all over the place. Some,

1 some allow for triple A arbitration, some say you have
2 to wait a certain amount of time, some say you have to
3 wait a longer amount of time.

4 That -- because they're all over the place and
5 the carrier may have an agreement that says one thing,
6 that says you must negotiate for a certain amount of
7 time, that would, would suggest that they can't come to
8 you with a service affecting problem. And if they were,
9 if they were to come to you with a service affecting
10 problem, the other party would point to their
11 interconnection agreement and say, no, they're violating
12 this provision of my, my contract with them. But in the
13 meantime, the customer is out of service.

14 So we would -- CLECs need to be able to point
15 to a rule in certain cases saying but this rule permits
16 us to come and ask for your judgment on this case. So
17 that's basically the point of the last slide is that the
18 interconnection agreements are all over the place. And
19 that, that concludes my, my discussion.

20 **MS. COWDERY:** Okay. All right. Thank you,
21 very much.

22 **MR. KONUCH:** This is Dave Konuch from Florida
23 Cable Telecom Association. We represent the cable
24 telephony providers in Florida. My clients provide
25 obviously cable telephony as well as cable television

1 and high speed internet service.

2 I wanted to be here this morning just to, to
3 say -- my comments will be very brief. We, we know from
4 the recent, recent deregulation legislation in Florida
5 that basically the main consumer protection tool that
6 the PSC has is the intercarrier dispute resolution
7 process, and, you know, that legislation was kind of
8 well crafted. There was a lot of consensus in the
9 industry when that was being created, and I know the
10 Commission has spent a lot of time implementing that
11 legislation by kind of getting rid of some rules,
12 modifying others, and I think this kind of falls into
13 this category. We have an interest in making sure that
14 this, this rule works really well.

15 As for specifically what changes need to be
16 made to it, I think, on behalf of cable, we're kind of
17 taking a wait-and-see approach. There, you know, there
18 are actually some blanks in the rule as to, you know,
19 what the goal should be for how many days a dispute
20 should be resolved in. So we, we, we just are here to
21 kind of listen and hear what the other parties have to
22 say with the aim of crafting a rule that's really going
23 to be effective and usable for years to come. I think
24 this is a great time to be looking at this because, you
25 know, we, we do have some, some -- there's no dispute

1 that's imminent right now that, you know, requires us to
2 put all our resources on that so we can really think
3 about how to create a rule that's going to be workable
4 for everyone.

5 My only specific comments on the staff's draft
6 is the reference to Section 364.058(3) on page 7, line
7 9. I believe that as part of deregulation that
8 statutory reference, that was modified, and I believe
9 that that was shifted into 364.164 and 5. So that's
10 something that I think we're going to need to look at
11 going forward. I think that reference needs, needs to
12 be changed.

13 And that's all I have for right now. Looking
14 forward to hearing what the other parties have to say on
15 the time limits and how to, how to make it, make this
16 rule as useful and effective as possible.

17 **MS. COWDERY:** Thank you. And just to be
18 clear, the draft and the materials is CompSouth's draft.
19 We've just retyped it so it follows the format. So it's
20 not a staff draft at this time.

21 **MR. HATCH:** Yeah. Good morning. This is
22 Tracy Hatch with, on behalf of AT&T Florida.

23 I guess the first comment is just sort of out
24 of the block, and that is it's not clear to me that
25 there is a pressing need to revise the rule. The list

1 of the three items that's in the slide, that's the first
2 that I was aware that these were being pointed to as a
3 basis upon which to change the rule.

4 The first one with Cbeyond, I don't recall the
5 specifics of that case, but I can tell you that it got
6 resolved without litigation I'm pretty sure. And I
7 don't know about the Time Warner Telecom or the third
8 one. Those are just -- I'm just unfamiliar to those.
9 So nobody, at least until today, has pointed out a
10 reason we need to fix this rule because here's a big
11 problem.

12 But I guess in addition to that, when
13 Mr. Darnell made reference to flexibility, to the extent
14 that the flexibility he's seeking exists, it already
15 exists in that rule today to invoke the procedure or
16 not. The changes that they're trying to propose to the
17 rule don't give you certainty, don't give you
18 flexibility, and make it more vague and uncertain as to
19 what's going to happen when and why.

20 If you, I don't know if you want to start
21 through the draft itself and go through piece by piece,
22 but those are just sort of the preliminary comments that
23 I would have. I guess the only addition to that is, is
24 that the amendments that they're trying to add don't
25 really add to the process but really attempt to bind the

1 Commission's discretion in exercising the process. And
2 it will ultimately inevitably, with some of the vagaries
3 in what they're proposing, create issues for the
4 Commission should have or didn't do it soon enough or
5 could have done it on a panel or could have done this.
6 And essentially they end up, A, restricting the
7 Commission's discretion, which restricts flexibility in
8 putting these kinds of requirements in a rule that would
9 otherwise bind the Commission to follow its own rules;
10 and, second, create an issue of regardless of whether
11 the ultimate result is good or bad, the Commission
12 should have done it a different way, and so I would have
13 won had the Commission done it the way I think it should
14 be done.

15 **MR. O'ROARK:** Good morning. I'm De O'Roark
16 and I represent Verizon Florida, LLC. I would really
17 just echo Mr. Hatch's comments.

18 As an initial general matter, it's really not
19 clear that this is a situation that has come up where a
20 customer is out of service and the customer is not being
21 put back into service because of a squabble between the
22 carriers. So I think the first question is whether
23 there's really a problem in need of a solution.

24 And the concern is that if you create this new
25 process to deal with a situation where if you have a, an

1 immediate and negative effect on a customer, if that's
2 the standard, then you may be sort of opening the door
3 to any creative lawyer to describe any situation that is
4 meeting those circumstances so that every complaint will
5 then be shoehorned into this rule and when it may not be
6 appropriate to do so.

7 And I'll have some other comments on the
8 specifics of the rule as we go through those.

9 **MS. MASTERTON:** Okay. Hi. Susan Masterton
10 representing CenturyLink. And I share the concerns that
11 Mr. Hatch and Mr. O'Roark have expressed. In the -- as
12 far as I'm aware, there haven't -- it's not like there
13 have been a lot of cases where people tried to invoke
14 this rule for 120 days and that wasn't quick enough or,
15 or where we've been contacted -- there's nothing today
16 that I'm aware of that would keep a carrier from
17 contacting staff and trying to elicit their assistance
18 in resolving issues. And I've not -- I mean, as far as
19 I'm aware, there haven't been a lot of instances where
20 that's occurred because of a situation with a customer.
21 So I just don't know what, what's out there that's
22 generating the rule.

23 And the other concern that CenturyLink has is
24 the ambiguity of the various criteria in here. In the
25 impeded service condition, I mean, we just don't know

1 what that means, so we don't know how this would
2 actually -- we have no way of knowing how this would be
3 implemented. And those are our biggest concerns. So we
4 also have some comments on the specific language as we
5 go through the rule.

6 **MS. COWDERY:** Okay. So it sounds like we
7 would like to go through the rule maybe on a
8 section-by-section basis because there are specific
9 comments, and I know specific comments would be helpful
10 to staff. And staff may also have some questions.

11 **MR. FEIL:** Kathyryn, may I say one other thing
12 --

13 **MS. COWDERY:** Yes, please.

14 **MR. FEIL:** -- before we get started? We're,
15 we're here to do the workshop because we're open to
16 hearing language that the, the ILECs may want to
17 propose.

18 And with respect to the argument that there
19 haven't been enough complaints in order to justify a
20 change in the rule, I just, I don't think you really
21 want to wait for a problem to happen and then realize
22 that maybe the existing rule doesn't give you enough
23 flexibility to resolve it quickly.

24 I don't -- I hope that there's not a dispute
25 that when there is a customer affecting issue, that 120

1 days is too long. So I hope that that's not something
2 that we have to address in terms of the need for a
3 change to the rule. But, again, we're open to
4 specific -- to the extent that there are ambiguities
5 here that, that the other parties want to address, we're
6 here to discuss those. We do want the Commission to
7 have the flexibility it thinks that it needs in order to
8 resolve customer disputes or, excuse me, carrier
9 disputes that affect customers in as short amount of
10 time possible.

11 **MS. COWDERY:** I think what I would suggest is,
12 Mr. Feil, maybe you could go through the rule starting
13 with Section 1, and we can see -- you could maybe
14 explain more specifically what the change you are
15 suggesting is, and then we can see if anyone else has
16 any specific comments on that particular section. Just
17 sort of step through in that kind of an organized
18 fashion. Does that sound like a plan?

19 **MR. FEIL:** That's fine.

20 **MS. COWDERY:** Okay.

21 **MR. FEIL:** Section (1), which is page 5 of the
22 notice, lines 2 through 6 -- with the changes on lines
23 3 through 6, the idea here is that you don't want to
24 have a, a situation where, as Mr. O'Roark, I believe,
25 alluded to, where every complaint is entitled to special

1 treatment, but rather just to instances where something
2 is actually affecting a customer. It doesn't
3 necessarily have to be out of service. And we use the
4 term "impeded service condition" because we were trying
5 to put words around, without using too many words, the
6 concept that the customer is not having calls completed,
7 doesn't have dial tone, it could be any of a number of
8 subset of issues where their service is not performing
9 as it should be. But, again, we're open to language
10 changes relative to this concept.

11 **MS. COWDERY:** Do we have any comments on
12 subsection (1)?

13 **MR. HATCH:** Yeah. The definition of immediate
14 and negative effect on a customer is key to all of the
15 other changes that flow, and they all flow from this
16 particular definition. And there is a problem with the
17 definition in the sense that out of service you can
18 probably pretty easily say, yeah, you're out of service
19 or you're in service. But when you get beyond out of
20 service and you say impeded service condition, and truly
21 I understand trying to minimize the total number of
22 words you wrap around it, but what you have done is
23 created a vagary that says, that basically says anything
24 that my customer is unsatisfied with the service becomes
25 an immediate and negative effect on the customer.

1 And that I think is, to Mr. O'Roark's point,
2 is that any complaint regarding, involving a customer,
3 which we're all telephone companies, all we do is
4 provide services to customers, so in theory everything
5 we do affects a customer somehow, someway. And I think
6 that that definition cannot practically work as a
7 discriminator whether to invoke this rule or not because
8 you get into serious probably controversies over what is
9 significantly hinder? I don't know what that means, and
10 that's certainly going to be in the eye of the beholder
11 when this comes. The customer's ability to utilize the
12 service within design parameters. Whose design
13 parameters and what does that really mean? And you get
14 into a long, extended fight about what a design
15 parameter is. I mean, these kinds of things introduce
16 vagaries into the definition that do not enable a quick
17 and easy resolution in a process.

18 **MR. O'ROARK:** Just -- this is De O'Roark.
19 Just one other point to note, and that is that the
20 definition describes what is included and says, but it
21 is not, not necessarily limited to those things, so that
22 the definition is left open-ended. So that not only do
23 you have the vagueness concern, but you've got sort of
24 the, the exception there that would allow really
25 anything else to fall within the definition, which is

1 also a problem.

2 **MS. MASTERTON:** Yeah. I would just say, I
3 think Mr. Hatch and Mr. O'Roark have pretty well
4 expressed the concerns that CenturyLink has with that
5 language as well.

6 **MR. BATES:** I do have a question related
7 specifically to this. Does nonpayment of disputed but
8 disallowed amounts resulting in an ILEC discontinuance
9 of service to the CLEC automatically become an immediate
10 and negative effect on the customers, and can you --

11 **MR. FEIL:** This language was not drafted to
12 address that issue, which the Commission has to deal
13 with from time to time, including in another couple of
14 weeks. It was not drafted with that in mind. It was
15 drafted with the mind where a customer is out of
16 service, where a customer is not having calls completed,
17 that sort of situation.

18 We're open to, as I've indicated, if they want
19 to, if Mr. Hatch wants a red line and it's going to be a
20 laundry list of things that are included and things that
21 are excluded, that's fine with us.

22 **MR. DARNELL:** This was just our best take at
23 trying to write the rule. I would love to have the
24 lawyers -- I'm not a lawyer -- try to, to try to make
25 these, tighten this language up and so we don't have

1 these problems post, post writing the rule.

2 So if, if there's ambiguities in it, let's get
3 rid of them. But get rid of them with intent because
4 some of the, some of the ambiguities may be there
5 purposely because the Commission should have judgment.
6 Let's look at the rule, how it should be interpreted,
7 how the Commission would be able to use it going
8 forward, and write it in a way that gives the Commission
9 the ability to use its brain when these things happen.
10 Saying, you know what, this is not just quickly dismiss
11 it, it's not a service affecting dispute, and say, the
12 Commission can say yes going forward. So I'm definitely
13 open to any red lines that the ILECs may have to the
14 rule change, and I would be happy to go through them
15 with them either here or later, or we can exchange red
16 lines and keep working on the language and work with
17 staff on doing the same thing and get this right.

18 **MR. HATCH:** To your question, Jeff -- this is
19 Tracy -- that thought, same thought occurred to me. But
20 from a perverse sort of -- I kind of like that idea
21 because basically it would force the Commission to rule
22 on these issues sooner, you know, if you're talking
23 about a billing dispute. So from that perspective, you
24 know, it's probably a good thing. But in general this
25 rule doesn't really, I think, work for that either,

1 although it could arguably be shoehorned in here.

2 **MR. BATES:** As a follow-up question, are there
3 any issues with due process related to that question for
4 either of the parties or even the end user?

5 **MR. FEIL:** I think that's part of what we're
6 here to talk about. I know that Mr. Hatch had expressed
7 some concerns about due process in the APA to me
8 previously and how that would fit into this sort of
9 environment, and one of the reasons we're here is to
10 talk through that.

11 I mean, I -- after he made that comment to me,
12 I looked through the APA, I looked through the uniform
13 rules. I don't think that there are many -- if there
14 are any obstacles, they're very few. But, again, we're
15 here to talk through those whatever those are. If
16 they're specific APA issues like this would be a problem
17 under 120.57(1)(6)(3) or whatever, then, you know, I'm
18 ready to address those. I have the book here. I'm
19 ready to, ready to talk through them.

20 **MS. MASTERTON:** This is Susan Masterton with
21 CenturyLink. Yeah. I mean, just generally though the
22 shortening of the process, if there are disputed issues
23 of material fact that entitle the parties to a hearing
24 or affected parties to a hearing, trying to do it in
25 less than 120 days I think potentially does jeopardize

1 due process. So, I mean, that is a concern we had that
2 I was going to address when we got further down in the
3 rule. But, I mean, whether it has a specific provision
4 in 120, it's whether you can meet the provisions of 120
5 within this shortened time frame I think is the concern.

6 **MR. HATCH:** Yeah. I had earlier raised with
7 Mr. Feil some issues regarding due process. I think
8 that when this rule was originally crafted, it was based
9 on a template that was done sort of informally prior to
10 that in a complaint -- I guess originally the complaint
11 was with MCI and they created sort of this whole cloth
12 expedited dispute process, and then the legislative
13 provision was added in. And that original complaint
14 became the template for the timelines that were created
15 here. And all these timelines were very carefully
16 vetted so as to make them consistent with Chapter 120,
17 the APA, and due process.

18 And when you -- now the timelines in here are
19 basically left intact, and that's fine. There are some
20 other issues that don't involve those particular
21 timelines that could potentially create an issue of due
22 process, but that would have to be situational when the
23 Commission decides to do something that would be, you
24 know, essentially a violation of due process or a
25 violation of the APA. It's hard to be prophylactic on

1 the front end with that kind of stuff.

2 But one of the things that the CLECs keep
3 talking about is 100 -- 120 days is too long. Well, the
4 rule says you make the decision within 120 days. It
5 doesn't say you have to take 120 days. It just says you
6 can't take longer than that. So if there is an
7 immediate issue that needs to be resolved, the
8 Commission inside the existing process without these
9 changes can make that decision within 120 days. But
10 what they cannot do is do it before you have an
11 opportunity for everybody to file their testimony, do
12 whatever discovery, even on a very expedited basis, and
13 then rule, which is what they seem to try and want to
14 do, albeit not formally requesting that because
15 obviously that would be a due process violation.

16 So if you're talking about the existing
17 timelines, I think the last day is day 56, arguably you
18 could go to a hearing on day 57. Impractical, might
19 well constitute a due process violation depending on
20 where things are in the case and the issues that are on
21 the table, but then you've got another 50 days or so to
22 make your decision. That seems like a pretty expedited
23 process to me.

24 **MR. FEIL:** Expedited when the customer is
25 without service that entire period of time?

1 **MR. HATCH:** Well, based on the existing
2 timelines in the rule, even as you have proposed these
3 changes, you cannot practically get a decision in less
4 than probably 80 days.

5 **MR. FEIL:** First of all, the APA requires
6 notice of hearing --

7 **MR. HATCH:** Before seven days.

8 **MR. FEIL:** -- with 14 days -- well, for some
9 hearings, but 14 days notice of a hearing. There's
10 nothing in the APA that requires prefiled testimony.
11 And the way the rule -- he even said the way the rule
12 was written was for a carrier dispute. MCI was involved
13 in a carrier dispute. Said nothing about a customer
14 being caught in the middle or a customer being without
15 service during that period of time. It was designed to
16 address an intercarrier dispute without a customer being
17 held hostage.

18 **MS. SALAK:** May I ask a question? This is
19 Beth Salak. In practical terms, not APA or -- you know
20 I'm not a lawyer -- but in practical terms, how long do,
21 has it been your experience that if you have a problem
22 where the customer is out will they stay with you and
23 not switch carriers?

24 **MR. DARNELL:** And not switch carriers? That
25 kind of depends on the customer. Some customers are

1 more temperamental than others.

2 You can placate a customer for a couple of
3 weeks max, two weeks maybe, before they start getting,
4 looking elsewhere. But out of service, if they're out
5 of service for more than a -- if a company that lives
6 and breathes by its telephone is out of service by more
7 than an hour, they're on the phone screaming at you.
8 And if you're not having it back up by the next day or
9 two days later, 48 hours later, they're looking for some
10 other alternative service. So it depends on the
11 customer, to answer that question, but some could be as
12 quick as 48 hours, some can be two weeks.

13 **MR. O'ROARK:** One thing that --

14 **MS. SALAK:** I was just going to ask
15 practically speaking how we could ever take care of the
16 48-hour scenario.

17 **MR. DARNELL:** Haul the parties into the room
18 and make them define what the problem is.

19 **MS. SALAK:** That day?

20 **MR. DARNELL:** And if it's a translation issue,
21 get the engineers in the room, find out what's causing
22 the engineering problem and find the root cause. Keep
23 them from talking past each other and pointing the
24 finger at each other but identifying where, where the
25 root cause of the problem is.

1 The one issue we were talking about is, I put
2 it in one of my slides, is the inter, intermittent
3 chronic problems where every time the wind blows, a tree
4 brushes the phone line and the customer's -- Papa John's
5 can't get their pizza orders because the tree, the wind
6 is blowing and their circuit is down for, you know, ten
7 minutes every time the wind blows. And then when the,
8 perhaps the ILEC tests the circuit, the circuit's fine
9 because the wind is not blowing, you know. And -- but
10 the customer still feels that they are out. So the
11 CLECs point their finger at the ILEC, the ILEC is
12 pointing their finger at the CLEC, and the customer is
13 caught in the middle and just wants their circuit to
14 work all the time.

15 The other is a translation issue where a
16 customer, perhaps a least-cost router doesn't want to
17 deliver traffic to a certain high-cost area because -- I
18 don't know if you read about these, but this happens out
19 on, out on the west coast a lot, not so much in Florida,
20 but there's some west coast areas where the least-cost
21 router doesn't want to deliver traffic to that high-cost
22 area because it costs two or three cents a minute to
23 terminate it and they're only getting a penny a minute.
24 So they blocked those numbers from those, from
25 terminating traffic to that location. That's a

1 violation of all kinds of things, but proving it is a
2 whole different, different, different position.

3 So that would be something where you'd haul
4 the carriers in and say, okay, why can't these -- the
5 one carrier will say I can prove this customer can't
6 receive calls from this location. And the other carrier
7 would sit there, well, twiddling their thumbs because
8 they've been ignoring, they've been not answering the
9 question for the last ten days. That, that stonewalling
10 of not answering the question is where the customer is
11 caught in the middle in that one.

12 You -- the Commission would be able, would be
13 able to hold their feet to the fire and say you're going
14 to answer the question.

15 **MS. SALAK:** So when you say the Commission, in
16 the 48-hour example, for example, you're talking about
17 gathering people, I can see that being staff. I can't
18 see that being a formal agency action.

19 **MR. DARNELL:** Yeah. I don't see it being
20 formal for the Commission -- for the formal Commission
21 either. The staff could be -- certainly could work
22 before staff.

23 **MS. SALAK:** And you don't think we can do that
24 now?

25 **MR. DARNELL:** I don't think -- I think there's

1 a potential for one carrier to say the other carrier
2 can't come to you now and throw up a legal roadblock to
3 it.

4 **MS. SALAK:** And that's because of your
5 interconnection agreement or, or --

6 **MR. DARNELL:** Because of the existing rule and
7 because potentially the interconnection agreement,
8 something like that. There's, there's nothing in black
9 and white that would say that the carrier having the
10 problem could say, but I'm allowed to under this rule; I
11 don't have to worry about what's in, in this other rule
12 or what's in my interconnection agreement.

13 **MS. SALAK:** And you think that our rule would
14 trump the interconnection agreement? I have an -- I
15 don't understand that.

16 **MR. DARNELL:** I don't know. I don't know.

17 **MS. SALAK:** Okay.

18 **MR. FEIL:** The way we drafted this it was not
19 necessarily designed to deal with that question. As he
20 indicated earlier, you're going to have a huge variety
21 of different things in interconnection agreements.

22 As a legal matter do I think it would be
23 appropriate or even viable for a rule to override an
24 existing and approved interconnection agreement? I
25 haven't looked at it, but I'd be leaning toward no.

1 But a lot of -- I've looked through several
2 interconnection agreements. Aside from them being all
3 over the place, they're -- a lot of them are not clear
4 on what you would do in a situation like this.

5 **MS. SALAK:** Uh-huh. Okay.

6 **MR. LONG:** Hi. This is Mark Long. Your, your
7 comments just a few minutes ago, it seems like you're
8 talking about the provisions you put in page 5, lines 14
9 through 20, about at least seven days prior to filing
10 the request you want to have a meeting with the parties
11 and the Commission staff to try to identify what it is
12 and resolve it.

13 **MR. DARNELL:** Yes.

14 **MR. LONG:** So is your hope that that, that
15 this provision will be able to resolve some of these
16 intermittent outages and other types of things where
17 you're talking past each other and not --

18 **MR. DARNELL:** Yes. It'll force the parties
19 not to -- to answer the question. You put them in a
20 room and you make them answer the question. That's the
21 biggest problem with disputes is when the one party in
22 the dispute knows they're wrong, they don't answer. So
23 that's -- they just stop, stop answering the phone. So
24 that's what happens when you know you're wrong in these
25 kind of cases. No one wants to put their, their bad

1 news in writing or air their dirty laundry, so they just
2 go quiet on you, so.

3 **MR. FEIL:** And that happens on both sides.

4 **MR. DARNELL:** Yes.

5 **MR. FEIL:** And there are going to be instances
6 where parties are talking past each other. And based on
7 past experience, staff is pretty good about narrowing
8 what the issues are and how they should be characterized
9 and framed and who has responsibility for what and that
10 sort of thing.

11 **MR. LONG:** So your hope is that this provision
12 would be used and get the parties together and perhaps
13 not make the actual filing of the expedited process
14 seven days or more later necessary. Some -- I mean, I'm
15 sure not in every, not in every case. But at least you
16 know once you've gone through this and you've talked
17 with the staff and all the parties have been in the
18 room, you've distilled it down to what really needs to
19 be litigated here.

20 **MR. DARNELL:** Yes.

21 **MR. LONG:** Okay.

22 **MS. SALAK:** I know we're bouncing around, but
23 on Section 1 I was wondering -- I know y'all talked
24 about an exhaustive list. I would like to see it. I
25 mean, if you do it -- I mean, whether y'all work

1 together or not, I would like to see a list because --
2 so I know what we're dealing with or what we would
3 potentially be dealing with.

4 **MS. COWDERY:** Just as an aside, in general as
5 far as the Joint Administrative Procedures Committee is
6 concerned, they, they are very careful to review rules
7 for any problems with vagueness, and it's just something
8 to keep in mind in drafting a rule in general.

9 **MR. HATCH:** This is Tracy. Again, the
10 conversation sort of wandered far afield, but to get
11 back to where we sort of started the real exciting part,
12 Matt's really very correct. The APA requires between
13 seven and 14 days for a hearing. That's absolutely
14 correct. But they're not proposing to change the
15 timelines in the rule that everybody would be bound by.
16 So what you're talking about is a hearing at least after
17 day 56 and then sometime after that, unless you're
18 talking about waiving all of the timelines in the rule,
19 having a hearing right after you file with no
20 opportunity for discovery, no opportunity for testimony,
21 no opportunity for Intervenors, then --

22 **MR. FEIL:** I'm not contemplating that there's
23 not going to be an Order Establishing Procedure. But
24 your suggestion that you have to wait --

25 **MR. HATCH:** I'm trying to understand.

1 **MR. FEIL:** Okay. Well, it was not crafted
2 with that in mind, that the hearing would only be after
3 day 56. It would be on a much shorter schedule. The
4 way it's contemplated is that once the Commission and
5 staff accepted the prospect that this was a customer
6 affecting issue, that it needed to be on a fast track,
7 that there would be notice of a hearing, and that there
8 would be an Order Establishing Procedure setting the
9 hearing date and setting the procedures for the hearing,
10 whether that included prefiled testimony or not.

11 **MR. HATCH:** There's nothing in what they have
12 filed that made that suggestion and that's brand new to
13 me. Now, if you want to go down that path, I have some
14 very serious due process concerns.

15 **MR. FEIL:** I'll be happy to hear them. I
16 brought the APA with us. And, and, mind you, the APA
17 also has procedures in place for -- it's set up so that
18 there's no prefiled testimony. You won't find the words
19 "prefiled testimony" anywhere in the APA.

20 **MS. MASTERTON:** Well, yeah. But -- this is
21 Susan. I mean, you know, they may say you have, you
22 can't have a hearing unless you give parties 14 days
23 notice. But, but there's also the decisions have to be
24 based on competent, substantial evidence and there's an
25 opportunity for discovery, and those could take more

1 than 14 days. And if you don't give the parties the
2 opportunity to develop the, the evidence to present to
3 the Commission to make their decision, then I think
4 they've got a decision that's imminently challengeable
5 and it's not allowing them to follow their
6 responsibilities under the APA. So I don't think that
7 14 days is the only consideration in determining what
8 the APA requirements are.

9 **MR. FEIL:** I wasn't suggesting that it was. I
10 was only suggesting that the APA has a requirement for
11 14 days notice before a hearing, does not require
12 prefiled testimony, and the Commission should have the
13 discretion, if it sees that there is a customer
14 affecting issue, to have a hearing and a time frame for
15 discovery, issue identification, what have you, so that
16 all the parties' interests are accommodated and the
17 customer is not held hostage.

18 **MR. HATCH:** I think that would be fine. But
19 you would have to at least make that notation in the
20 rule before you're invoking it. All of the sudden
21 people are surprised by the fact that they're going to
22 hearing in less than day 56. When there's a
23 procedural -- the whole point of putting this procedural
24 schedule in is to avoid the negotiation in a procedural
25 order that lays out the schedule. That's why this rule

1 was created. Now what you're doing is essentially
2 repealing this rule and going back to an ad hoc process.
3 File a request for expedition with a suggested schedule
4 and there you are. But that's not what this rule does.
5 Now if he wants to repeal the rule and start over, let's
6 go.

7 **MR. FEIL:** I didn't say I was repealing the
8 rule or suggesting a repeal of the rule, but rather an
9 ad hoc process within the Commission's discretion when
10 the customer is held hostage.

11 **MR. HATCH:** But this rule doesn't provide for
12 an ad hoc process. You're asking for one on top of this
13 rule.

14 **MR. FEIL:** The rule is crafted, the changes
15 are crafted so that the Commission has the discretion
16 and the flexibility to schedule in a manner which it
17 sees fit in order to accommodate the interests of the
18 parties and help the customer who's out of service or
19 has an impaired service condition.

20 Now, if -- but, again, if, if there's specific
21 changes that they want to make -- and the degree to
22 which a hearing has to be expedited may depend on the
23 degree to which the customer has a problem and how far
24 the parties are along in the process of dealing with
25 that problem. You could have an environment where a

1 hearing in 60 days is perfectly adequate or an
2 environment where a hearing within 30 days is something
3 that's more warranted. It's very difficult to craft a
4 rule to address every scenario.

5 The rule, as it exists today, is designed to
6 address a scenario where there is an intercarrier
7 dispute without a customer being held hostage.

8 **MS. MASTERTON:** Yeah. I mean, I just have to
9 disagree with that. I, I don't think it was considered
10 whether there was a customer. I don't think it was
11 without or with. I don't think that was part of what
12 went into developing the rule. But I guess I still have
13 the same concerns.

14 There is a process -- and these are all done
15 under interconnection agreements, and there's processes
16 in the interconnection agreements for resolving these
17 kinds of issues. And as far as I've heard yet today, I
18 haven't heard that that hasn't worked, I guess. I mean,
19 I would like to know when has that not worked? That is
20 the way that it is laid out for the parties to try to
21 resolve these issues without having the time that's
22 involved in going to the Commission, you know, injected
23 into it. That's number one.

24 And number two, what you said earlier, the
25 whole thing is being done with the presumption that

1 it's, it's the ILEC's fault and let's make them do what
 2 they're supposed to do. But like somebody noted, the
 3 issues are usually because maybe we think it's your
 4 fault. And who's fault is it? How easily can that be
 5 resolved without a full hearing if there's a dispute
 6 about the basic facts? I mean, that's my concern with
 7 this whole process is it just tries to jump over all of
 8 what goes into a dispute and why there is a dispute and
 9 the processes in the interconnection agreement that are
 10 set out to try to resolve the dispute quickly.

11 **MR. O'ROARK:** Just one other point. I'm
 12 looking at subsection (9), which currently provides that
 13 unless otherwise provided by order of the Prehearing
 14 Officer, based on the unique circumstances of the case,
 15 a schedule for each expedited case will be as follows.

16 So the current rule would allow a party to go
 17 to the Prehearing Officer and say, look, my customer has
 18 been out of service for two weeks here; we need to move
 19 more quickly based on the unique circumstances of this
 20 case and the Prehearing Officer in that circumstance
 21 could have an even more accelerated process. So the,
 22 the current rule would accommodate this situation.
 23 Apparently the situation has never come up in the, you
 24 know, 16 years since the act was passed, but the rule
 25 would accommodate it today.

1 **MR. HATCH:** To De's point, this is Tracy, and
2 that's kind of where I was going, going to go next
3 before we got sidetracked is that what the CLECs are
4 asking for now, the existing rule provides them. The
5 only thing --

6 **MR. DARNELL:** That's wonderful to hear. Can
7 we -- I just wonder where -- if we could, if we could
8 write that into the, the rule, make sure that it's clear
9 that it does do what you just said, I'd be satisfied
10 with that. I, I don't, I don't know that it does.
11 That's my, my position.

12 **MR. HATCH:** The rule is clear now. If you're
13 concerned about a customer impact, that would be the
14 basis in your petition to ask for a super expedited
15 process.

16 It would be the same instance where the
17 Commission, Prehearing Officer would make a judgment
18 based on what you filed whether to invoke the process.

19 But what you have done is taken a step further
20 in binding the Commission's discretion and saying, well,
21 you have to assign it to a panel, you have to schedule
22 it as soon as possible, and that's a whole another set
23 of issues and problems.

24 **MR. DARNELL:** I don't believe we've bound the
25 Commission at all in any way by these rules. There's

1 nothing binding in, in these rules.

2 **MR. HATCH:** When it says the Commission shall
3 schedule it as soon as possible, then that's kind of a
4 binding rule.

5 **MR. DARNELL:** As soon as possible, how is that
6 binding?

7 **MR. HATCH:** As soon as possible in the
8 Commission's standard time can be a lot of things, but
9 nonetheless.

10 **MS. COWDERY:** So we have actually right now
11 been having a discussion on our subsection (9),
12 primarily with other sections brought in. I just
13 wondered if staff had had any specific questions on that
14 subsection (9) with the added language, Disputes with an
15 immediate and negative effect on a customer will -- or
16 shall, I suppose -- be scheduled for hearing as soon as
17 the calendar will --

18 **MR. HATCH:** That's in section (11), but yeah.

19 **MS. COWDERY:** Well, yeah. What? That's in
20 what?

21 **MR. HATCH:** Section (11) of the, of the draft
22 rule.

23 **MS. COWDERY:** Okay. It's in --

24 **MR. HATCH:** It's in, under -- it's the
25 underscored stuff that's in (11). That's where it says,

1 the Commission shall schedule a hearing as soon as the
2 Commission's calendar will accommodate. And then it
3 requires a vote within, we don't know how many days.

4 **MS. COWDERY:** Okay. I have it in (9) on mine.
5 That's interesting.

6 **MS. SALAK:** I think it's in both places.

7 **MS. COWDERY:** Oh, it's in (11) also? Okay.
8 Did you have any --

9 **MR. HATCH:** The draft -- the version attached
10 to the notice that I have has a blank.

11 **MS. COWDERY:** Right. Do we have anything in
12 particular on, I guess, subsection (9) and then (11),
13 any additional points to make or questions or
14 explanations? And staff doesn't have any particular
15 questions on that to add.

16 **MR. FEIL:** I'm sorry. Were you looking to me,
17 Kathryn, for --

18 **MS. COWDERY:** No. I just wonder -- I was just
19 looking to everybody. It seemed like we had a good
20 round discussion on the particular language you were
21 adding in section (9), and then Tracy brought up we've
22 got the similar language in (11).

23 **MR. FEIL:** Right. Well, part of the problem
24 again is that it's difficult to put words around every
25 conceivable scenario and have it as clear and specific

1 and finite as possible. However, if there are scenarios
2 where the other parties think, look, there, there should
3 be some more clarity around (9), (11), or (1), we're
4 open to additional specification to make the rule clear.

5 **MS. COWDERY:** Okay.

6 **MR. KONUCH:** This is Dave Konuch from FCTA.
7 As far as the definition in (1), I think that's
8 something that, you know, all, all the parties probably
9 need, need to look at and try to make it as specific as
10 possible.

11 One, one thing we, we look to as something
12 that would limit the amount of complaints that might be
13 subject to this is that the prefiling requirement in
14 subsection (3) which requires you to get your testimony
15 and your exhibits together ahead of time, that
16 necessarily is going to limit a lot of complaints that
17 might be brought. It requires whoever is, is invoking
18 this process to have some, some skin in the game,
19 regardless of what, you know, is in, in the definition.
20 So, so we see that as a limiting factor, that it's a
21 good thing because it makes people really think twice
22 about, you know, is this a serious enough dispute that
23 we need to invoke the expedited process.

24 And as far as having an expedited process
25 generally, and I know Beth and the CompSouth -- or

1 Ms. Salak and the CompSouth folks talked about what
2 happens if, you know, a customer is really out of
3 service. You know, in that situation really any length
4 of time is, is too long and it's difficult for, for
5 anyone to really move quickly enough to resolve
6 something like that.

7 But as, as staff has pointed out, a lot of
8 times these are resolved by negotiation. And having a
9 process like this I think probably gives the staff, you
10 know, a lot of leverage in conducting those
11 negotiations, so the parties are going to sit there and
12 figure it out and kind of work through it. So I see
13 that as a good thing.

14 And certainly with -- I was involved, when I
15 worked at the FCC back in the late '90s, with their
16 rocket docket process, which was a similar expedited
17 process, and often just the, the fact that, that the
18 process was out there and could be invoked resulted in a
19 lot of settlements. So, so having something like this I
20 think really is, is a good thing. It's just a matter
21 of, you know, refining it so that we, we have it work as
22 well as it possibly can.

23 **MS. COWDERY:** Thank you.

24 Any other comments on subsection (3)?

25 **MS. MASTERTON:** Well, did we do (2) yet,

1 because I had a comment on subsection (2)?

2 **MS. COWDERY:** No, we've sort of been jumping.

3 **MS. MASTERTON:** I got confused. Yeah. I
4 mean, I think, I think Matt indicated that he didn't
5 intend, or that it wasn't the intent of the parties
6 suggesting the rule to try to override the provisions of
7 interconnection agreements that have been approved by
8 the Commission, and that is our concern with this rule.
9 "Encourage to follow applicable terms" seems to say you
10 don't have to if you don't want to. So our preference
11 in this regard would just be to strike that language and
12 not say anything about it. So to the extent that there
13 was an interconnection agreement that didn't require you
14 to follow whatever dispute, you could go ahead and bring
15 it if this process were put in place. And if there is
16 was one that doesn't let you, that would govern, and I
17 think that that's our suggestion on that provision.

18 **MR. BATES:** Have there been any instances
19 where parties to a complaint have followed dispute
20 resolution terms outside those in the interconnection
21 agreements?

22 **MR. FEIL:** Jeff, I'm certain that there are
23 because with respect to interconnection agreements and
24 dispute resolution clauses, you're going to have all
25 sorts of different flavors, varieties, and provisions.

1 Certainly at the trades -- notwithstanding
2 what's in the agreement, at the trades level most
3 carriers are going to try to resolve issues, customer
4 affecting or not, at the trades level.

5 And with regard to Susan's suggestion that we
6 delete this language, I thought it was something that
7 the other carriers would want in here. But if they
8 don't want it in there, I don't have a problem deleting
9 it.

10 **MS. MASTERTON:** Yeah. Because, I mean, my
11 other alternative would be to say "must," and I don't
12 think that's really necessary either. So I think just
13 remaining silent would be the best way to address that.

14 **MR. BATES:** Okay. One other question on this
15 section is what exactly in the context of this rule
16 change suggestion, what exactly does "encourage" require
17 of staff?

18 **MR. FEIL:** Require of staff?

19 **MR. BATES:** Yes.

20 **MR. FEIL:** It doesn't require staff really to
21 do anything other than to the extent that it would have
22 relationship to subsection (3) and the changes that
23 we've suggested there. I mean, you could be in a
24 situation hypothetically where the, there was some
25 provision of an interconnection agreement that addressed

1 negotiation prior to filing a complaint, and let's say
2 it was mandatory that there's a 15-day negotiation
3 period, that the parties, in staff's estimation, didn't
4 follow. You could point to what I've drafted here in
5 (2) while you're in one of the meetings contemplated in
6 (3) that, look, we looked through the interconnection
7 agreement.

8 And by the way, so we're clear on this too,
9 there are all types -- there could be interconnection
10 agreements between CLECs. It doesn't always have to be
11 between an ILEC and a CLEC, but I mention that as an
12 aside.

13 But in any case, as I indicated earlier when
14 Susan commented, we're amenable to deleting that
15 language from section (2).

16 **MR. BATES:** Okay. So just so I'm clear,
17 "encourage" could really at the end of the day be just a
18 phone call to the parties individually or collectively
19 and say, hey, follow the procedures you've got set in
20 your interconnection agreement.

21 **MR. FEIL:** Yes, or we're going to have you in
22 here in another five days and we're going to talk
23 through this, through this issue and the procedural
24 matters that we're going to have to address in order to
25 get this to hearing. Yes.

1 **MR. BATES:** Okay. Would that also serve as an
2 informal Issue ID meeting as well, or do you see Issue
3 ID as being a further step as part of the expedited
4 process?

5 **MR. FEIL:** I see the language in subsection
6 (3) as being also Issue ID, not necessarily subsection,
7 the language in subsection (2).

8 **MR. BATES:** Okay.

9 **MS. MASTERTON:** Can I -- may I ask you a
10 question? Are you reading that language to say that the
11 staff shall encourage parties? I mean, I read it that
12 the rule was encouraging parties, not as the staff shall
13 encourage. So I'm kind of, you know --

14 **MR. BATES:** Well, I was, I was confused with
15 who actually is doing the encouragement. That's, that's
16 what I was looking for clarification.

17 **MS. MASTERTON:** Well, then -- okay. Thank
18 you. Yeah.

19 **MR. FEIL:** Everybody should encourage
20 everybody, I think.

21 **MR. BATES:** Doesn't that occur now?

22 **MR. FEIL:** You mean whether parties encourage
23 one another to resolve disputes informally? I'm sure
24 that it does, yes.

25 **MR. BATES:** With staff?

1 **MR. FEIL:** I don't know that staff -- the
2 percentage of involvement that staff has with the -- I'm
3 sure there's a huge percentage of disputes day to day
4 that staff doesn't see. I mean, the staff only gets
5 involved when they're asked to get involved, so.

6 **MR. BATES:** That's all the questions I have.
7 Thank you.

8 **MR. HATCH:** I have a technical question. This
9 is Tracy. If the informal conference is designed to be
10 the Issue ID before the petition is even filed, to
11 Jeff's question, is Issue ID subsequent to that?

12 **MR. FEIL:** Are you asking -- if you're asking
13 that question of me, I think you can have Issue ID
14 before a petition is filed. You're sitting there
15 discussing what the issues are and why, why there's a
16 dispute and why the customer is out of service, assuming
17 it's an out-of-service condition. Why not?

18 **MR. HATCH:** Then it presupposes, then it
19 presupposes your petition comes in, it's consistent with
20 the issues you've identified already.

21 **MR. FEIL:** Certainly.

22 **MR. HATCH:** And then, then what happens? Just
23 to walk through your scenario of what kind of a process
24 you would expect to have happen, independent of the
25 process that's already in the rule.

1 **MR. FEIL:** I'm sorry. Was that a question?

2 **MR. HATCH:** That was a question.

3 **MR. FEIL:** Repeat, repeat the question.

4 **MR. HATCH:** I'm trying to figure out how this
5 is actually going to work because basically the existing
6 rule, you're setting that aside. You file a petition,
7 the Commission is going to do an expedited process.
8 What is that process going to be in your mind?

9 **MR. FEIL:** In my mind it's subject to the
10 discretion of the Prehearing Officer. Let's say it's,
11 let's say it's an out-of-service condition and the
12 Prehearing Officer -- let's say it's a customer with
13 four lines, and one of the two lines, or one of four
14 lines is out of service. In that case, the Prehearing
15 Officer would have to exercise his or her discretion as
16 to how important one out of four lines is. Let's say
17 the customer has all four lines out. In that instance,
18 the Commissioner is going to have to exercise his or her
19 discretion to determine, okay, look, a hearing within 30
20 days is what's warranted.

21 **MR. DARNELL:** Let's suggest that it's the
22 Democratic National Convention Committee here in
23 Tallahassee out the day before the election, that kind
24 of thing.

25 **MR. FEIL:** Well, that's not necessarily going

1 to be possible for the Commission to address.

2 **MR. DARNELL:** No. But these are the kind of
3 problems. That's why you need discretion. Some
4 customers need immediate action. Other customers -- you
5 know, you want to treat everybody without, without, you
6 know, any kind of insight to what, who they are, but in
7 some cases, hospitals, first responders, you know, those
8 kind of people, those kind of customers need responses
9 now.

10 Other customers, you know, sorry, the
11 accounting firm, you know, you may not be able to get
12 resolved today. We don't need Commission involvement.
13 But if it, if your police department is out of service
14 and two carriers are pointing the finger at each other
15 and they're saying it's not their, not their fault, we
16 may, we may need to escalate that. That's just a matter
17 of using discretion and giving the Commission the
18 flexibility to, to think about what the problem is and
19 how quickly do we need to act on this one? And that's
20 --

21 **MR. FEIL:** And I would hope that in a
22 situation where there is a dispute and a customer is out
23 of service, let's talk through the four-line customer
24 hypothetical and they have all four lines down, I would
25 hope that, A, the carriers would work the problem out

1 before invoking the procedure, with some encouragement
2 from, from staff to the extent necessary; and also that
3 the issue would get resolved in such a way that if there
4 were procedural concerns, that the parties would consent
5 to the procedure being used.

6 So, for example, the four-line situation,
7 let's say the Prehearing Officer says, you know, I think
8 we need to have a hearing within 30 days, I think that
9 it's not going to be possible to have prefiled testimony
10 under that scenario, but I think that there is going to
11 have to be discovery, so I'm going to require a five-day
12 turnaround on discovery, that sort of thing.

13 The Prehearing Officer, the Commission would
14 have flexibility in order to address problems in such a
15 way that is parallel to or appropriate to the
16 circumstances of the problem.

17 **MR. HATCH:** My concern is this -- and this is
18 Tracy -- is if everybody agrees, no harm, no foul. But
19 the reality of my existence is not everybody agrees.
20 And when they don't agree, then what happens, which
21 prompted my, which is why I asked the first question.

22 For example, we do our Issue ID, we know what
23 the issues are. They file their petition. That starts
24 the clock running. I file a motion to dismiss within
25 seven days. They have seven days to respond. Okay.

1 They respond to it the next day because it's in their
2 interest to do so. Then you've got to schedule, draft a
3 recommendation, take it to agenda, get it ruled on
4 before you can then schedule your hearing. I mean,
5 those are just the practical kinds of questions that
6 arise in every case, and that's how this rule got put
7 together the way it is today is because all of those
8 questions were answered by this rule, and now all of
9 that's gone. And this rule creates an enormous vagary
10 as to how things are going to happen when you want them
11 to happen on an expedited basis. This rule lays it all
12 out; everybody knows what's going to happen.

13 If there is a life and death scenario that
14 requires expedition of the nature that they're asking
15 for, it should be apparent in the petition, and this
16 rule allows for it without the kinds of changes they
17 want.

18 **MS. MASTERTON:** This is, this is Susan
19 Masterton with CenturyLink. Yeah. Are we talking about
20 (3) now? I'm getting confused because I'm trying to
21 go -- I mean, I have comments and I just didn't want to
22 lose the opportunity.

23 **MS. COWDERY:** I think we're still on (3).

24 **MS. MASTERTON:** Yeah. From CenturyLink's
25 perspective, this part of the rule is something we

1 probably could live with. I'm not saying the language
2 that, you know, exactly that's here, that we
3 wouldn't suggest some modifications, but the concept of
4 having a meeting with staff, even under the current
5 120-day process, is I think something that actually has
6 merit and could be of benefit to both, to both parties.
7 So I just wanted to get that in there.

8 **MS. SALAK:** And the language in that part is
9 acceptable?

10 **MS. MASTERTON:** Well, no. I, I mean, I'm
11 assuming we might have an opportunity to submit in
12 writing if we had particular changes to the language.
13 So I'm not saying that we wouldn't have any changes, but
14 just the concept that you would have a meeting to try to
15 discuss it, see if there could be an informal agreement,
16 and also try to narrow down the issues in dispute I
17 think is something that could benefit the parties and
18 the Commission.

19 **MS. COWDERY:** Could, Mr. Feil, could you
20 explain to me just again, I think you may have gone over
21 this, but what would staff's role be in that subsection
22 (3), informal meeting? What would, what would staff be
23 there for?

24 **MR. FEIL:** I see staff's role here under this
25 language in subsection (3) as marshaling the parties

1 through the process and making sure that the parties
2 understand the gravity of the situation, what the issues
3 are, narrowing the issues to the extent possible, and
4 also serving a role as, in helping the Prehearing
5 Officer determine whether or not the circumstances are
6 as exigent as one party or another may claim that they
7 are. Just because somebody says something is an
8 emergency doesn't necessarily mean that it is. So also
9 as a filter to the Prehearing Officer who's going to
10 have to make a determination, or a Commissioner who's
11 going to have to make a determination on the, how
12 expedited the process should be.

13 **MS. COWDERY:** Okay. And when you're talking
14 about any agreements resulting from such informal staff
15 meeting, agreements as to --

16 **MR. FEIL:** Resolution. I'm sorry. Resolution
17 as to -- actually I guess you can have an agreement on
18 procedural issues and how that should go, or you can
19 have an agreement on substantive issues as well, whether
20 it be incomplete or partial resolution of the dispute.

21 **MS. COWDERY:** Okay. Did you have any specific
22 thoughts as far as when you thought an agreement should
23 be approved by the Commission?

24 **MR. FEIL:** I do not. I think that there are
25 going to be some situations where -- bless you -- where

1 parties will be perfectly happy reaching a resolution
2 among themselves without having the Commission approve
3 anything.

4 There may be some instances where the parties
5 agree to, say, a protocol going forward that is designed
6 to address the problem that gave rise to the dispute.
7 That may be something that the parties and/or staff
8 would want to have the Commission approve.

9 **MR. DARNELL:** And also airing this, airing
10 these issues before the Commission will enable the
11 Commission to determine whether or not a more broad
12 determination by the Commission is necessary for the
13 entire industry. When we have two parties having an
14 issue, that issue is often affecting other carriers or
15 will affect other carriers in the future, and it would
16 be better to get in front of the problem and fix it for
17 the entire industry and put out a rule for the entire
18 industry. But by bringing the issue before, before
19 staff, before the Commission, the Commission will have
20 the knowledge to, to evaluate the issue whether it's
21 just, strictly just a carrier-to-carrier issue, or is
22 this carrier-to-carrier issue broader that it will
23 affect all carriers, and that would be, you'd be able
24 to, be able to see that.

25 **MS. MASTERTON:** Yeah. This -- I said that --

1 I wasn't saying that all of the language in here was
2 something that CenturyLink could support, and I think
3 this sentence is probably the one that I was reading it
4 as meaning agreements as to process or procedure or
5 issues that would affect a case that was going to be
6 filed.

7 I don't think there's a mechanism for the
8 Commission just to take an agreement between two parties
9 that doesn't have anything to do with a pending dispute
10 or issues and just approve it. And I would -- and we
11 would not support that.

12 There's a long history at the Commission of
13 allowing parties to enter into settlement agreements
14 between themselves and not, you know, file them with the
15 Commission unless they meet the criteria of an
16 interconnection agreement. And I wouldn't want to see
17 this rule change, change that, and I don't -- I see Mr.
18 Darnell nodding, so I don't think that was probably the
19 intent here.

20 **MR. DARNELL:** No, that's not my intent. My
21 intent would be the Commission would then be able to
22 initiate a subsequent proceeding after that because they
23 have the knowledge of the problem and they would be able
24 to go into more depth in a further proceeding, future
25 proceeding.

1 **MR. FEIL:** Well, even staff would have the
2 discretion to do whatever it wanted to do relative to
3 that environment to begin with. So to that degree, this
4 language is not absolutely necessary. But the reason
5 this language is in here is because staff is given the
6 discretion in order to -- the parties may think one
7 thing but staff may think another, so I wanted to -- or
8 at least the way this was drafted, it contemplated a
9 situation where the parties think it's not necessary
10 but, for one reason or another, staff thinks that it is.
11 But that, that environment may exist notwithstanding
12 this language. And if it's something that all the
13 parties think isn't necessary, then it's something that
14 we would consider removing or modifying.

15 **MS. COWDERY:** Do we have any more comments on
16 subsection (3)? And I know we did, you know, because,
17 of course, these different provisions do work with one
18 another, we did, I think, discuss in (9) and (11) a bit,
19 but I just want to make sure we've gotten all the
20 comments people want to give on those provisions. So do
21 we have anything additional to add on subsection (9)?

22 **MR. HATCH:** Let me add one brief thing because
23 this is sort of the subtext of my debate back and forth
24 with Matt about what the process is actually going to
25 be.

1 The rule allows me to file an answer within 14
2 days. If I file a motion to dismiss in 14 days, you're
3 going to have to rule on that. After that, I'm still
4 entitled to file an answer. So I'm not sure how fast he
5 thinks he can get to a hearing even if he asks for it
6 and even if the Commission decides it's appropriate.

7 **MR. FEIL:** The Commission doesn't have to rule
8 on a motion to dismiss even if one's filed. It can
9 proceed with the hearing and reserve the issue of the
10 motion to dismiss at disposition, for disposition at the
11 hearing. He's assuming, Tracy is assuming that those
12 are on separate paths. They don't have to be on
13 separate paths.

14 **MR. HATCH:** He's quite right, but then you run
15 the risk of everybody devoting an enormous amount of
16 resources for something that should have gone away
17 up-front, which is the whole point of a motion to
18 dismiss.

19 **MR. FEIL:** Which is within the discretion of
20 the Commission to address as it sees fit, given the
21 circumstances of the case.

22 **MR. HATCH:** Which they have today without this
23 rule.

24 **MR. FEIL:** Not explicitly enough in our
25 estimation.

1 **MR. HATCH:** Let me ask this question. Is the
2 explicitly enough the inclusion of the immediate effect
3 language, that basically, as I read it, forces the
4 Commission into an expedited dispute process more or
5 less if you make an allegation of immediate negative
6 effect?

7 **MR. FEIL:** Which language specifically are you
8 referring to; where and what section?

9 **MR. HATCH:** Well, when you create the
10 definition, you say immediate and negative effect,
11 disputes with an immediate and negative -- it's in
12 (9) -- will be scheduled for hearing as early --
13 essentially, if you make the allegation of immediate and
14 negative effect, you've automatically created an
15 expedited process without the discretion of the
16 Commission.

17 **MR. FEIL:** I don't say that the mere
18 allegation of that creates the environment. The
19 Commission has the discretion to determine whether or
20 not it is indeed a dispute with immediate and negative
21 effect. So to the extent you're suggesting that the
22 mere allegation is enough, I disagree with you.

23 **MR. HATCH:** But -- so essentially the
24 Commission makes the decision of an immediate and
25 negative, the Commission, but in this case it would be

1 the Prehearing Officer I assume you're asking about.

2 **MR. FEIL:** Yes, I believe so. They're going
3 to have to --

4 **MR. HATCH:** You make the allegation, they say
5 there's immediate, then you're automatically in a
6 disputed process. I mean an expedited process. I'm
7 sorry.

8 **MR. FEIL:** Is that a -- if the Commission
9 makes the determination that it is something that's an
10 immediate and negative effect on the customer, then,
11 yes.

12 **MR. HATCH:** In order to make the Commission
13 determination, you're going have to draft a rec, take it
14 to agenda.

15 **MR. FEIL:** That's not what I'm suggesting.
16 What I'm suggesting is the Prehearing Officer is going
17 to have to make a procedural determination, a
18 preliminary judgment as to whether or not it fits within
19 the scope of immediate and negative effect on a
20 customer. I mean, isn't it going to be patently obvious
21 that the dispute is such that the customer is out of
22 service? And I'm using that hypothetical for
23 simplicity.

24 **MR. HATCH:** Out of service, yes. Out of
25 service is not the critical point. It's the including

1 but not limited to anything else you can imagine.

2 **MR. FEIL:** All right. Well, let's put some
3 words around that.

4 **MR. KONUCH:** This is Dave Konuch at FCTA.
5 Going back to (8) for expedited proceedings, generally
6 it talks about the factors provided in Section 364.058.
7 We, we still need to, to address that. So I'm just
8 stating that for the record since we've already moved to
9 (9). I want to make sure that's on there.

10 **MR. O'ROARK:** De O'Roark with Verizon. A
11 couple more thoughts on (9). One is the new language
12 that would require scheduling as early as the
13 Commission's calendar will accommodate, it's not
14 entirely clear what that means. It could be read to
15 mean the next open calendar date on the Commission's
16 calendar. And if so, that could be problematic because
17 let's say that's three days from now, it leaves very
18 little time to do anything.

19 And a related point is that (9) in these
20 accelerated cases would leave it apparently entirely to
21 the Prehearing Officer's discretion whether and how to
22 accommodate motions to dismiss, discovery, whether
23 there's an opportunity for rebuttal testimony, whether
24 staff gets to file testimony. That's an awful lot of
25 discretion to have in the Prehearing Officer's hands.

1 With the existing process at least it's clear
2 what the steps are going to have to be, and those steps
3 can be accelerated based on the unique circumstances of
4 the case.

5 **MR. FEIL:** If I may. The Prehearing Officer
6 has that discretion now whether a case falls under the
7 current rule or not. The Chairman has complete control
8 over the calendar, as I understand the Administrative
9 Procedures Manual, and the Commissioners under the
10 Chairman's authority. So it's not like the, a
11 Prehearing Officer can say I want to have a hearing in
12 three days. The Chairman has control of the calendar.

13 So -- and with respect to three days in
14 particular, then you do have an APA problem because
15 unless parties consent, you get 14 days notice for a
16 hearing, so.

17 **MR. HATCH:** In the FAW, which requires another
18 week.

19 **MS. MASTERTON:** I just have a question for
20 Matt. Just to, I mean, just to make sure I understand
21 what you're saying is when you say no prefiled
22 testimony, but you're then contemplating, you know,
23 direct and rebuttal testimony at the hearing; right?

24 **MR. FEIL:** I think that under the APA that
25 parties have a right to present direct testimony,

1 present rebuttal testimony, cross-examination of
2 witnesses. So I would agree with your statement. Even
3 if prefiled testimony was not undertaken, I think that
4 parties would have a right to rebuttal testimony.

5 **MS. MASTERTON:** And direct, I mean, but --

6 **MR. FEIL:** Direct and rebuttal, just as you
7 would if you were at a DOAH hearing.

8 **MS. MASTERTON:** Right. Okay. Thanks.

9 **MR. O'ROARK:** But if that's what's
10 contemplated, then what you have is the complaining
11 party having filed prefiled direct testimony with their
12 petition and the responding party not having the
13 opportunity to itself file prefiled testimony.

14 **MR. FEIL:** I'm not contemplating a scenario
15 where only one side submits prefiled. It would be
16 consistent for both or not at all. You'd have prefiled,
17 you'd have prefiled by all parties or not at all. You
18 wouldn't have it for one versus another.

19 **MR. O'ROARK:** Well, by definition in the rule,
20 with your petition you must file your direct testimony.
21 So that's on the table to begin with. So --

22 **MR. FEIL:** Point to me the language you're
23 referring to, please.

24 **MR. HATCH:** That's the original filing
25 requirements, the request for expedited, the statement

1 of specific issues, and --

2 **MR. FEIL:** All right. Well, then I see
3 what -- you're in subsection (3).

4 **MR. HATCH:** Yeah. Subsection (3).

5 **MR. FEIL:** Lines 10 through 13. The process I
6 am contemplating does -- would not necessarily include
7 prefiling of direct testimony. I think that that's --
8 in most instances I think that that should be required,
9 but I don't know whether or not it would be in every
10 instance.

11 **MR. O'ROARK:** But if we go down that road,
12 what you can see happening is that in many cases you'll
13 have a complaining party saying, well, this is a special
14 case, so I'm not going to file my direct testimony.
15 And, you know, there's a customer being affected here,
16 so I invoke the process, but I'm not going to follow
17 what had been the procedures, and you end up seeing that
18 as a matter of course. I think that's the real risk in
19 going down this road.

20 **MR. FEIL:** Well, I agree that as drafted
21 subsection (3) does require the prefiling of direct
22 testimony. And I think that if these rule revisions
23 proceed further, I think that that's something that we
24 can talk about more, and whether or not after the
25 prefiling of the direct testimony, whether or not live

1 testimony or other prefilings would be required. So, in
2 short, I could foresee a number of different scenarios
3 where after an initial round maybe you don't want to
4 have any additional prefilings under the
5 circumstances -- I'm being a little bit vague but it's
6 not intentional -- but I think that that's part of the
7 process that we can talk about a little bit more.

8 I mean, I understand requiring -- on the one
9 hand, I understand requiring the filing of direct
10 testimony with, with the petition because that makes --
11 you have some certainty then that the party who's
12 complaining is serious about moving forward relative to
13 the dispute. But on the other hand, you don't really
14 want procedural inconsistency because that may give rise
15 to additional problems. And by procedural inconsistency
16 I mean where one side is submitting direct testimony but
17 the other side goes live.

18 But I could foresee the argument that if you
19 want an expedited hearing and you want it within
20 45 days, then you're going to have to have one side
21 having prefiled and the other side not. I mean, in
22 other words, there is a, there is a price to pay for
23 getting an expedited hearing, and that may include not
24 having prefiled responsive testimony.

25 **MR. O'ROARK:** And the concern, one concern I

1 would have is that if you're the complaining party,
2 you'd always like to make the other side pay that price.

3 **MR. FEIL:** I'm sorry. What was that?

4 **MR. O'ROARK:** If they knew -- if you're the
5 complaining party, you're always going to want to take
6 advantage of this rule and make the other side pay that
7 price of not being able to prefile testimony and be at a
8 disadvantage. And so again you have the problem of
9 creating a rule where a problem doesn't exist and then
10 having people routinely invoke the rule to get around
11 some of these procedural protections.

12 **MR. FEIL:** I don't know that anybody would
13 want to routinely invoke having a hearing and the costs
14 associated with that.

15 **MR. HATCH:** Just an observation. If you're
16 con -- well, filing of direct testimony with your
17 petition, that was put in there very deliberately
18 up-front so that everybody would know day one as soon as
19 the petition dropped exactly what the complaint was and
20 exactly the basis for the complaint. But now you're
21 contemplating an expedited process without everybody
22 knowing what that is until the day of the hearing.

23 **MR. FEIL:** That's not correct because you're
24 having your seven days meeting with staff. You're going
25 to know what the issues are.

1 **MR. HATCH:** It's one thing to identify an
2 issue, and particularly in issues around here we tend to
3 settle for a few number of very broad issues that don't
4 help you when it comes time to actually put your case
5 together. You know what your case is when you put your
6 testimony together. I mean, it's not clear to me. I
7 think at the very minimum you have to file some direct
8 testimony with your petition. I don't think that
9 that's -- that creates more problems than it solves.

10 **MR. FEIL:** Well, do you have --

11 **MR. HATCH:** Other than to get your expedited
12 hearing quicker.

13 **MR. FEIL:** Do you have a concern if the
14 petitioner files prefiled direct but the respondent is
15 not required to because of the hearing being in 40 days?

16 **MR. HATCH:** I do have some concerns. But
17 could that be done, essentially have prefiled direct and
18 live rebuttal? Potentially. I mean, that's not a due
19 process violation, assuming you have time to prepare all
20 of this.

21 **MR. FEIL:** All right. Well, again, it sounds
22 like there's some room for working through that
23 question.

24 **MS. COWDERY:** Mr. O'Roark, you had a comment.
25 Did you want to make a comment on subsection (8)? Did

1 you have something you wanted to -- I know there
2 weren't -- we were sort of going through the sections
3 that had proposed changes, but I wasn't sure by
4 something you said if you had something you wanted to
5 discuss about 364.058.

6 **MR. O'ROARK:** I think it was Mr. Konuch who
7 had a comment on subsection (8).

8 **MR. HATCH:** There's a statutory reference that
9 needs to be fixed. That's all.

10 **MS. COWDERY:** Right. Sorry. Konuch. Yes. I
11 --

12 **MR. KONUCH:** Right. You were looking at me
13 but mentioning Mr. O'Roark. That kind of confused me a
14 little bit.

15 **MS. COWDERY:** Sorry. Excuse me.

16 **MR. KONUCH:** No. It's, it's that, that
17 statutory reference that 364.05(a)(3) actually contains
18 the criteria that was initially used to decide if
19 something should be expedited or not. And I believe
20 that's been moved to 364.16(5). So that would have to
21 be updated, and that's something that, you know -- that
22 is the basis for this rule. That's my only comment.

23 **MS. COWDERY:** Okay. All right. Did we have
24 any additional discussion on subsection (11)?

25 **MR. HATCH:** Did we ever get a time or is that

1 just whatever the Prehearing Officer decides once this
2 process is invoked he will set a time for the Commission
3 to rule?

4 **MR. FEIL:** I think that it was left blank
5 because it was something that we expected to discuss at
6 the workshop.

7 **MR. HATCH:** Do you have anything in mind --

8 **MR. FEIL:** Well, here's --

9 **MR. HATCH:** -- other than yesterday?

10 **MR. FEIL:** Here's the, the other thing I would
11 mention relative to this sort of expedited environment
12 is that you could, you could have situations in which it
13 goes to the full Commission, although that would be
14 difficult; a situation where it goes to a panel; or
15 situations where it's decided by one Commissioner. I
16 know that the Commission has not done that often and has
17 not done it in a while, but the APA and 350 do allow it.
18 So it wouldn't necessarily have to go to an agenda for a
19 decision, but that's probably something that I'm
20 guessing the staff would favor.

21 So, again, the procedural dimensions of this
22 were such that it was difficult putting words around the
23 concept, so it was drafted to promote discussion and
24 flexibility. And if there, there -- it seems to me like
25 if there are red lines to sections prior, that

1 (11) would be a fallout or changes to (11) might be a
2 fallout to any changes suggested to sections prior.

3 **MS. COWDERY:** Any additional comments or
4 questions on subsection (11)?

5 **MR. HATCH:** (11) doesn't contemplate assigning
6 to a single Commissioner. But if you did that, it would
7 act as a DOAH hearing officer and then we'd have to file
8 a recommended order, which would then go through that
9 process under the APA and then have to be referred to
10 the full Commission for approval.

11 **MR. FEIL:** I disagree with that, by the way.
12 If you read 120, it permits a member of an agency to
13 make a decision and is not acting as a hearing officer
14 on behalf of the agency. It permits one member of a
15 Commission to make a decision and have it be final
16 order. That's my read of the APA. If you disagree,
17 we'll --

18 **MR. HATCH:** I do, but that's okay. We'll save
19 that for later.

20 **MR. FEIL:** Okay. Well, we can, we can deal
21 with that later. But my read of 120 is that it does
22 permit that.

23 **MR. HATCH:** It would be an uncommon practice.

24 **MR. FEIL:** It would be, but it's an uncommon
25 circumstance where a customer is out of service as a

1 result of a party dispute.

2 **MS. MASTERTON:** And so then a motion for
3 reconsideration would just go to that one, one
4 Commissioner, to be considered by that one Commissioner?

5 **MR. FEIL:** I think so. I think that would be
6 consistent with the procedural practices, yes. But it's
7 just like if, if you were asking for reconsideration of
8 a ruling by a judge, you'd go back to the same judge.

9 **MS. COWDERY:** Any additional comments or
10 questions on subsection (11)?

11 Subsection (12), any questions or comments?

12 **MS. SALAK:** Mr. Feil?

13 **MR. HATCH:** This one opens the door
14 potentially to problems. I mean, it would have to be
15 circumstantial where, A, the kind of discovery that you
16 serve, and the 15 days is actually pushing tight on
17 discovery now, although it's been done sooner or later
18 as a general proposition. But it would have to be
19 situational, but it creates the opportunity for, okay,
20 you've got two days for discovery. That could be a due
21 process problem.

22 But these are circumstantial based on every
23 case you get to, and I'm not sure that you can
24 prophylactically fix that up-front. This rule was
25 drafted, try to do that within 15 days because that

1 seems to be a reasonable expedited process. But making
2 it sooner than that creates its own issues.

3 **MR. FEIL:** I don't necessarily disagree with
4 what he just said. It's going to be tough. If you have
5 five days for discovery, it's going to be tough. But
6 parties should be incented to -- if that's the case,
7 parties should have a greater incentive to try to
8 resolve the dispute.

9 And there are, you know, there are going to be
10 instances where even at DOAH you would have a shortened
11 discovery time frame of five days, ten days. And I
12 presume it has happened on rare occasion here at the
13 Commission as well. I don't know whether or not there
14 was a shorter turnaround time for discovery relative to
15 the FPL settlement hearing, but I'm guessing that that's
16 the case.

17 **MS. COWDERY:** All right. Any comments on (14)
18 or (15)?

19 **MR. FEIL:** The changes on (14) and (15) were
20 just designed to carry through. So to the extent that
21 we have definitional changes suggested in (1), or even
22 if we're changing the actual terminology here, that
23 would also flow through.

24 **MS. COWDERY:** Okay.

25 **MR. HATCH:** Just a comment, an observation.

1 The change in (15) that says "based on the removal," it
2 seems to suggest a flavor that all of these changes are
3 basically designed to give leverage to the party that's
4 complaining to get a settlement quicker. I mean, that's
5 what it seems to be.

6 **MR. FEIL:** I wouldn't necessarily agree with
7 that. But here's, here's, here's what I would, how I
8 would address that.

9 If the Commission was clearly, clearly had
10 injunctive authority where the Commission could issue a
11 temporary resolution to a dispute and say, okay, here's
12 what we're going to do in this dispute, you're going to
13 do this, you're going to do that, and that's going to be
14 the status until we have time to get to a hearing and
15 have prefiled testimony, if the Commission had that sort
16 of authority and said it had that sort of authority, or
17 if it was in 350 or 367 or elsewhere, then we probably
18 wouldn't have a need to make changes to this rule.

19 Because if there was a dispute that the Commission could
20 put a temporary patch on, that would make things better.

21 What this language in -- was it (15) --
22 section (15) was suggesting is the parties could agree
23 to a temporary patch, maybe staff could encourage the
24 parties to agree to a temporary patch, and then the need
25 for the expedited hearing -- because the customer is not

1 out of service or doesn't have, or his call completion
2 issue is addressed for the time being. So that's part
3 of what's encompassed or considered in this language.

4 And it's, it's an issue that comes up from
5 time to time. I know the Commission has said it doesn't
6 have injunctive authority. There have been instances
7 where the Commission has done something to put a patch
8 on or suggest a patch because it's procedural or they'll
9 say that it's a procedural issue. But that's something
10 that's, that's often debated at the Commission and, and
11 by Commissioners and staff as well as parties.

12 **MR. BATES:** Matt, is this intended to give the
13 Commission or staff injunctive authority under anything
14 other than the words "injunctive authority"?

15 **MR. FEIL:** No. A rule couldn't do that even
16 if you wanted it to do it.

17 **MR. BATES:** Okay. Thank you.

18 **MS. COWDERY:** Do we have any additional
19 comments or questions on any portion of the proposed
20 changes?

21 **MR. HATCH:** Let me just make one observation.
22 I hate to be a contrarian, but that's clearly what I am
23 in this one.

24 All of the conversations basically were
25 amenable to making this all better. I approached this

1 from a point that I don't think, I don't think you need
2 to make it any better. I think by what they're
3 proposing makes it worse. So I'm having a certain
4 amount of internal conflict in suggesting ways to fix
5 something that I think is bad from the very beginning,
6 and so I'm not quite sure where we are.

7 Now, if I knew that this rule was going to go
8 forward and there were going to be changes, then there
9 may be something I would fix. But I don't want to
10 concede and I cannot concede that the fix-its of any
11 sort need to be made. I know they certainly want them
12 and think they're appropriate. I clearly do not. But
13 I'm having a hard time trying to fix what I perceive to
14 be their problems when I think it just creates more
15 problems.

16 **MR. FEIL:** It doesn't create more problems for
17 the customer who's out of service.

18 **MR. HATCH:** And, candidly, in my experience
19 litigation is never going to fix that, expedited or not.
20 That will either be resolved by the companies working
21 together to fix whatever the problem is.

22 **MS. MASTERTON:** Yeah. And, I mean, I would
23 have to concur with Tracy that I didn't hopefully imply
24 by any discussion that we have, you know, somehow
25 changed our position that the rule is not necessary,

1 that it's accommodated by the interconnection agreement
2 provisions and existing rules and statutes today and
3 that this doesn't, isn't needed and hasn't been
4 demonstrated to be needed yet as far as I've heard. I
5 mean, the idea that we want to have it before we need
6 it, because when we need it to me is not a sufficient
7 justification for, for making this kind of change to the
8 normal procedures that the Commission uses in processing
9 disputed cases.

10 **MR. O'ROARK:** I agree with Mr. Hatch and
11 Ms. Masterton on that, that, you know, if we knew we
12 were going to have a rule, there's certainly a lot we
13 would want to do to modify what's on the printed page
14 here, but remain unconvinced that there's a need for
15 these revisions in the first place.

16 **MS. COWDERY:** We anticipate that the
17 transcript of this proceeding will be ready by
18 December 3rd, and we would appreciate any written
19 post-workshop comments, and I was thinking Friday,
20 December 21st, should give sufficient time, unless you
21 feel like --

22 **MR. HATCH:** Is there, is there magic about
23 that day, because I'm basically off the last half of
24 December? I'm trying to use up the vacation that I
25 cannot carry over.

1 **MR. O'ROARK:** Mr. Hatch's deadline can be the
2 14th.

3 (Laughter.)

4 **MR. HATCH:** It might work out better.

5 **MS. COWDERY:** No. I don't think there's any
6 magic to that date.

7 **MR. HATCH:** If you want to bump it to January,
8 it would be perfectly okay with me. But if you need it
9 --

10 **MS. COWDERY:** Okay. What, what time frame
11 would work for you for comments?

12 **MR. HATCH:** I'm back in the office on the
13 31st. Any time after that is fine with me.

14 **MR. FEIL:** As the petitioners, we don't have
15 an objection if it's a week or two into January. That's
16 fine. I don't want to pressure the other side.

17 **MS. COWDERY:** Okay. You want us to say
18 Friday, January 11th?

19 **MR. HATCH:** Okay.

20 **MS. COWDERY:** Does that, does that work for
21 you?

22 **MR. HATCH:** That works fine.

23 **MS. COWDERY:** Okay. So we'll say that we
24 would appreciate any post-workshop written comments by
25 Friday, January 11th. And if you wish to give us a new

1 red line, strikeout, type and strike version of the
2 rule, that would be appreciated for any changes that you
3 might make.

4 As part of this rulemaking, staff will prepare
5 a statement of estimated regulatory costs consistent
6 with 120. If you have any input that would be
7 applicable to the SERC as to whether or not the
8 anticipate, you anticipate that the suggested rule
9 amendments would be likely to directly or indirectly
10 increase regulatory costs in excess of \$200,000 in the
11 aggregate in Florida within one year after the rule's
12 implementation, we would like to receive those comments.
13 Or if there are, you think there's any adverse impacts
14 on any of the matters listed in the rule, we would like
15 to hear from you on that, too.

16 Are there any questions? Okay. Well, thank
17 you very much for your full participation in this
18 workshop, and the workshop is adjourned.

19 (Proceeding adjourned at 11:08 a.m.)
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25

1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorneys or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 31st day of December,
19 2012.

20 Linda Boles
21 LINDA BOLES, RPR, CRR
22 FPSC Official Commission Reporter
23 (850) 413-6734
24
25