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Subject: Docket No. 120208-- CenturyLink's Post-Workshop Comments
Attachments: 120208 CenturyLink Post Workshop Comments 2-5-13.pdf

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FPSC-COMMISSION CLERK



February 5, 2013

VIA ELECTRONIC FILING

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

Re: Docket No. 120208-TX

Dear Ms. Cole:

Enclosed please find Embarq Florida, Inc. d/b/a CenturyLink's Post-Workshop Comments which we ask that you file in the above captioned docket.

Copies are being served upon the parties in this docket pursuant to the attached certificate of service.

Sincerely,

/s/ Susan S. Masterton
Susan S. Masterton

Enclosures



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**CERTIFICATE OF SERVICE
DOCKET NO. 120208-TX**

I hereby certify that a true and correct copy of the foregoing has been served upon the following by electronic mail delivery on this 5th day of February, 2013.

Kathryn Cowdery Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-08050 kcowdery@psc.state.fl.us	Competitive Carriers of the South, Inc. Garry Sharp, Executive Director P.O. Box 058303 Nashville, TN 37215 glsharp@comcast.net
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/s/ Susan S. Masterton
Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to initiate rulemaking to revise) Docket No. 120208-TX
and amend Rule 25-22.0365, F.A.C., by) Filed: February 5, 2013
Competitive Carriers of the South, Inc.)
_____)

CENTURYLINK'S POST-WORKSHOP COMMENTS

Embarq Florida, Inc. d/b/a CenturyLink (“CenturyLink”) submits the following post-workshop comments regarding the proposed changes to Rule 25-22.05.365 requested by the Competitive Carriers of the South, Inc. (“CompSouth”) in its Petition.¹

SUMMARY

Rule 25-22.0365 provides an expedited process that is sufficient to address CompSouth’s concerns without the need for any changes. CompSouth has failed to demonstrate a legitimate need for the changes it has proposed. Further, the ambiguous changes that CompSouth proposes add little substance to the current process and create the potential for confusion and additional disputes. For these reasons, the Commission should decline to adopt changes to the rule as proposed by CompSouth.

To the extent the Commission determines that there is a need to provide a further expedited process in limited circumstances, CenturyLink suggests the following revisions to CompSouth’s proposal:

- The application of the rule should be limited only to circumstances where a customer is out of service;
- Language suggesting that compliance with the dispute resolution provisions of an interconnection agreement is voluntary should be deleted;

¹ A rule development workshop was held on November 15, 2012. Specific citations to the workshop transcript are noted in these comments as “TR x.”

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- Parties may be required to meet with the staff before filing a petition for expedited resolution; and
- Parties should not be required to file or seek approval of agreements reached as part of the informal staff process with the Commission.

DISCUSSION

CompSouth hasn't demonstrated that a further expedited process is needed

In accordance with section 364.16(6), Rule 25-22.0365 sets forth an expedited process for resolving disputes between telecommunications companies (i.e., incumbent local exchange companies or competitive local exchange companies certificated by the Commission).² In its changes to Rule 25-22.0365, CompSouth essentially retains the expedited process and requirements of the existing rule but adds additional language that is apparently intended to address particular situations where CompSouth suggests an even more expedited process is needed.

The current expedited process was adopted in 2004 to address concerns that the typical formal hearing process did not always operate quickly enough to address problems that arose between telecommunications companies in a competitive environment.³ As Mr. Hatch stated at the workshop the timeframes in the current rule were adopted taking into consideration the requirements of the Administrative Procedures Act and the constraints of the Commission's calendar and scheduling capabilities. (TR 21, 49) The process in the current rule provides: 1) that the companies attempt to resolve their dispute informally before filing a request for expedited resolution; 2) that a request for expedited resolution must include the direct testimony and exhibits of the petitioner; and 3) that the request must include an explanation of why expedited resolution is appropriate, including any "matter the company believes relevant" to determine

² As noted by Mr. Konuch at the workshop, the references in the existing rule to 364.058 need to be updated to reflect the correct statutory cite in 364.16.

³ *In re: Proposed adoption of Rule 25-22.0365, F.A.C., Expedited Hearing*; Docket No. 040269-TP.

whether an expedited proceeding is appropriate. A response to the request for expedited resolution must be filed in 14 days and must include any information the respondent believes will assist the prehearing officer in determining whether expedited resolution is appropriate. The Prehearing Officer must decide no sooner than 14 days after receiving the request whether expedited resolution is appropriate. If the prehearing officer determines that it is, the rule sets forth expedited time frames for processing the case, although the prehearing officer may alter these time frames based on “the unique circumstances of the case.” Ultimately, the Commission must make a decision on the dispute no later 120 days after the request for an expedited proceeding is submitted. The time frames in the rule are considerably shorter than the typical time frames associated with resolving intercompany disputes, which often involve complex technical and policy issues. As noted, the rule further provides opportunities for even shorter time frames in the discretion of the Prehearing Officer and the Commission.⁴

Although CompSouth has suggested substantial modification to the current rule, it has failed to identify an instance where a company appropriately invoked the current rule, but was unable to secure relief in a timely manner.⁵ CompSouth implies that the reason the current process has not been invoked more often is because it is insufficiently expedited to be useful.⁶ However, CompSouth has not addressed why the flexibility contained in the current rule has not or could not be pursued to address the types of situations it has identified as the rationale for the proposed changes. Since it appears that CompSouth’s members have not attempted to resolve their issues within the current rule and available processes, Centurylink believes it is premature

⁴ Subsections (9) and (12) of the existing rule provide that the prehearing officer may alter the delineated time frames based on the unique circumstances of the case. Further, subsections (10) and (11) allow the Commission to render an order sooner than 120 days after the case was filed.

⁵ CenturyLink’s research indicates that process set forth in the current rule has been invoked sparingly over the years since its adoption.

⁶ Comments at the workshop suggest that a motivation for CompSouth’s proposal may be to provide additional leverage in negotiations to resolve a dispute outside the formal Commission process.

to consider an even further expedited process as contemplated by CompSouth's proposed changes.

Subsection (1)

In this subsection, CompSouth proposes to add a definition of "immediate and negative effect on a customer." The purpose of the definition is to establish the situations in which the further expedited process suggested by CompSouth in subsections (9) and (11) of the proposed rule would apply. As explained above, CenturyLink does not believe a further expedited process is needed. However, to the extent the Commission may determine that there are certain customer-affecting situations that might justify the specification of a further expedited process, CenturyLink believes that it would unreasonable to apply this process to circumstances other than where a customer is out of service. Any attempt to incorporate a broader class of "impeded service conditions" would only lead to ambiguity and further disputes. Out-of-service conditions are, generally, fairly easily identified. Other customer-affecting situations often are in the eye of the beholder and if interpreted in the broadest sense could incorporate any situation in which a customer was dissatisfied with the service. This result would greatly expand the disputes that qualify for a further expedited process, which would impose undue administrative burdens on both the Commission and the parties. Further, the unfettered implementation of a significantly compressed process could threaten the Commission's ability to render a fair decision in compliance with the protections set forth in ss, 120.567 and 120.569(1) for cases involving disputed issues of material fact.⁷

⁷ These protections include: the opportunity for all parties to seek discovery, present evidence and argument on all issues involved, including rebuttal evidence, and to conduct cross-examination.

Subsection (2)

This subsection includes new language “encouraging” companies “to follow applicable terms of any agreement between the parties for dispute resolution.” CenturyLink is concerned that this language is intended to make the applicability of the dispute resolutions contained in the parties’ interconnection agreements voluntary.⁸ These terms are set either as a result of mutual agreement through negotiations or as result of a Commission-resolved arbitration and are binding contractual terms. To the extent that a party to such an agreement believes that existing terms are inadequate, the mechanism for addressing these concerns is through negotiation or arbitration. On this basis, CenturyLink objects to any language in the rule that would imply that compliance with these interconnection agreement terms is optional. CenturyLink suggests that this language be deleted.

Subsection (3)

CompSouth proposes to add language in this subsection requiring, prior to a company filing a request for expedited resolution of a dispute, that the companies must conduct an informal meeting with the Commission staff to discuss the disputed matters. CenturyLink believes that this sort of meeting with staff is an available option to companies under the current rule and Commission processes. The Commission specifically has an existing process for mediation to assist in resolving disputes. While CenturyLink believes that the staff assistance envisioned by CompSouth’s proposed changes can be accommodated under current processes and that, therefore, the proposed language is not necessary, CenturyLink agrees that staff assistance may help companies resolve their differences without the need for a formal Commission proceeding.

⁸In fact, Mr. Darnell’s explanation of the purpose of this language confirms that it is intended to allow a complaining company to circumvent the dispute resolution terms of an interconnection agreement. (TR 8)

CompSouth's proposed language in the last sentence of subsection (3) also requires that "any agreements resulting from such an informal staff meeting will be in writing and, if deemed necessary by staff, approved by the Commission." This language potentially appears to require the Commission to approve settlement agreements between parties to an extent that is inconsistent with Commission practice. CompSouth has provided no explanation or justification for this recommended change. Therefore, should the Commission decide to go forward with a rule, this sentence should be deleted.

Subsection (9)

CompSouth's suggested changes to this subsection appear to be the essence of the further expedited process they are proposing. Specifically, the proposed language provides that "Disputes with an immediate and negative effect on a customer will be scheduled for hearing and disposition as early as the Commission's calendar will accommodate." As previously stated, CenturyLink does not believe CompSouth has demonstrated a need for this further expedited process, nor has CompSouth explained why the flexibility of the current rule language is not sufficient to address its concerns. In addition, the language is ambiguous and adds little substance to the current rule while creating a great deal of uncertainty and potential for dispute. For these reasons, these suggested changes should be rejected.

Subsection (11)

As with subsection (9), the suggested changes to this subsection include aspirational language that the Commission schedule a hearing "as soon as the Commission's calendar will accommodate" and that there be a "goal" to reach a final decision within an unspecified time frame. Again, this language is ambiguous at best. In addition, CompSouth has not explained why

this aspiration for a quicker resolution cannot be accommodated by the current rule. The Commission similarly should reject these suggested changes.

Subsections (10), (12), (14) and (15)

These subsections contain conforming modifications to reflect the changes discussed in subsections (1), (9) and (11) above. To the extent the Commission determines that the changes to those subsections are unnecessary, as CenturyLink has suggested, the conforming changes to the subsections referenced here would also be unnecessary.

Conclusion

Rule 25-22.0365 provides an expedited process that is sufficient to address CompSouth's concerns without the need for any changes. CompSouth has failed to demonstrate a legitimate need for the changes it has proposed or to demonstrate where the opportunities for an expedited process set forth in the existing rule have been insufficient to resolve disputes. Further, the ambiguous changes that CompSouth proposes add little substance to the current process and create the potential for confusion and additional disputes. For these reasons, the Commission should decline to adopt the changes to the rule as proposed by CompSouth. To the extent that the Commission determines that there is merit to providing further expedited dispute resolution, the Commission should adopt CenturyLink's suggested revisions to CompSouth's proposal, as discussed in detail above.

Respectfully submitted this 5th day of February 2013.

/s/ Susan S. Masterton
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