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BY UPS 2ND DAY DELIVERY

January 8, 2009

Ms. Beth W. Salak, Director
Division of Regulatory Compliance
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 080680-TL; Notice of Election of Price Regulation

Dear Ms. Salak:

In response to your letter of December 4, 2008 to Ms. Juliana Janson, we believe that you are incorrectly interpreting Sections 364.051 and 364.052, Florida Statutes. Under Section 364.051(1)(a), a local exchange telephone company with 100,000 or more access lines does not become subject to price regulation until the later of the filing of a notice of election to be under price regulation and the certification of a company to provide local exchange telecommunications services in its service territory. However, under Section 364.051(1)(b), a local exchange telecommunications company with fewer than 100,000 access lines needs only to file an election pursuant to Section 364.052 to become subject to price cap regulation. There is no requirement for local competition.

Section 364.052 provides two ways for a small local exchange telecommunications company such as Frontier Communications of the South to become subject to price regulation under Section 364.051. The first way, on which you appear to be solely focusing, is an automatic conversion to price regulation after January 1, 2001 when a certificated competitive local exchange carrier provides basic local telecommunications service in the small company's territory. Section 364.052(2). However, there is a second track for a small company to become subject to Section 364.051. Under Section 364.052(3), a small company "may at any time after January 1, 1996, elect to be regulated pursuant to s. 364.051." Your interpretation, which would not allow a small company to elect price regulation until there is actual basic local service competition, is directly in conflict with Sections 364.051(1)(b) and 364.052(3), neither of which requires competition prior to an effective election. The way to harmonize these statutes is to recognize that Section 364.052(2) automatically subjects a small company to price regulation without an election when there is basic local competition, but that the small company is free under Sections 364.051(1)(b) and 364.052(3) to elect price regulation at any time after January 1, 1996.

Your interpretation that actual competition is required is also inconsistent with the way the statute treats large telephone companies. Under Section 364.051(1)(a), a large company's election of price regulation is effective as soon as a competitor is certificated within its territory. It does not make sense to require actual competition before a small company can move under price regulation when the statute only requires certification of a competitor before a large company can move under price regulation. Once again, we submit that the proper reading of the statute is that the presence of actual local exchange competition is only an alternative, and automatic, way for a small company to become subject to price regulation even if it does not file an election to do so.

We also disagree with your interpretation of Section 364.02(1). Bright House is providing "basic local telecommunications service." All of the services listed in the statutory definition are included in one or more Bright House bundles. The fact that Bright House provides basic service in a bundle with other services does not mean that Bright House is not providing basic service. Bright House is porting away basic local customers from Frontier, and they continue to get basic local service from Bright House. There is nothing in the statutory definition that excludes what would otherwise be basic local telecommunications service, when that service is provided with other services. Frontier commented in its letter to the FL PSC Staff in August 2007 there was no basic local competition in our serving areas because Bright House is a cable company. However, since the writing of that letter, a substantial number of customers have ported their phone service with the existing Frontier telephone numbers to Bright House. Bright House has also obtained its own assignment of area code 850, exchange code 754 with 10,000 telephone numbers covering Frontier's Molino rate center. These facts substantiate our foregoing argument there is competition in Frontier's serving areas of Florida and that cable companies are in fact providing basic service.

We also would like to call to your attention the legislative intent expressed in Section 364.01(4) (c), (f) and (g), each of which we believe supports our reading of the statute.

Subsection (c) shows the legislature's intent that "monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation." Frontier no longer has, if it ever did, a monopoly on the provision of basic local exchange services. Frontier ported more than 50 customers to Bright House in 2008, representing more than 1% of Frontier's access lines in Florida. Number porting demonstrates that there is no longer any monopoly in the provision of basic local telecommunications services.

Subsection (f) shows the legislature's intent to "eliminate any rules or regulations which will delay or impair the transition to competition." Frontier submits that it is competitively impaired by remaining subject to rate-of-return regulation when it is trying to respond to an effectively unregulated competitor. For competition to be fully beneficial to customers, all competitors must be free to compete effectively.

Subsection (g) shows the legislature's intent to "ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint." Frontier submits that the current situation of regulatory restraint, one that is only applicable to Frontier, causes Frontier to be treated unfairly.

Finally, we would like to note that another competitive carrier is attempting to avail itself of the benefits of Commission regulation by asking the Commission to arbitrate the terms and conditions of an interconnection agreement. See Docket No. 080731, in which Comcast Phone of Florida is petitioning the Commission for arbitration of an agreement with Quincy Telephone Company d/b/a TDS Telecom. Comcast is in the same competitive situation with TDS as Bright House is with Frontier. It is apparent that the cable companies view themselves as competitive with small telephone companies. The Commission should not on one hand entertain petitions by cable companies to facilitate their competition with telephone companies, and on the other hand deny telephone companies the regulatory structure they need to compete with cable companies.

Frontier Communications of the South therefore respectfully requests that you recognize Frontier's election of price regulation to be effective.

I would also like to request that Ms. Angela McCall be included in any correspondence in the docket. Her contact information is as follows:

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Done
1/14/09
R.V.J.

Very truly yours,

Gregg C. Sayre
Associate General Counsel –
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GCS/hmj