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From: Martha Johnson [marthaj@fcta.com]
Sent: Tuesday, August 30, 2011 10:23 AM
To: Filings@psc.state.fl.us
Subject: Docket No. 110224-TP - FCTA's Post Workshop Comments on Proposed RAF
Attachments: Docket No. 110224 FCTA's Post Workshop Comments 8-29-2011.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact David Konuch at the number below. Thank you.

A. The person responsible for this electronic filing is:

David A. Konuch
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B. The docket title is: **In Re: Docket No. 110224** – Proposed amendment of Rule 25-4-0161, F.A.C. Regulatory Assessment Fees; Telecommunications Companies.

C. This document is filed on behalf of the Florida Cable Telecommunications Association, Inc.

D. This document has a total of 9 pages.

E. Description of document: Post Workshop Comments of Florida Cable Telecommunications Association

Proposed Regulatory Assessment Fee Rules

Thank you,

Martha Johnson
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8/30/2011

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06241 AUG 30 =
FPSC-COMMISSION CLERK



Florida Cable Telecommunications Association

Steve Wilkerson, President

August 29, 2011

VIA ELECTRONIC FILING

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

Re: **Docket No. 110224-TP** – In re: Proposed amendment of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies

Dear Ms. Cole:

Enclosed for electronic filing in the above referenced Docket, please find the Post Workshop Comments of Florida Cable Telecommunications Association on Proposed Regulatory Assessment Fee Rules.

If you have any questions whatsoever, please do not hesitate to contact me at (850) 681-1990.

Your assistance in this matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'DAVID KONUCH', is written over a horizontal line.

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Enclosures

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Docket No. 110224-TP

August 29, 2011

POST WORKSHOP COMMENTS OF FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION ON PROPOSED REGULATORY ASSESSMENT FEE RULES

Florida Cable Telecommunications Association, Inc. ("FCTA")¹ hereby submits its comments on In re: Proposed amendment of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, in response to the Commission Staff's request for comments at its August 22, 2011 Workshop.

INTRODUCTION AND BACKGROUND

This past decade witnessed dramatic growth in cable telephony subscribership. The Commission's prompt and capable oversight of intercarrier disputes has helped foster this growth. In 2008, the Legislature began deregulating ILEC retail service while preserving wholesale regulation. In 2011, cable and other CLEC telephony subscribership increased to where the legislature found deregulation of ILEC and CLEC retail service was warranted, provided that the Commission stood ready to resolve competitive disputes.

In HB 1231, the legislature retained and emphasized the Commission's "continued role" as an overseer and arbiter of disputes between carriers. Chapter 364.16(1) (added by HB 1231). Previously, the commission had a twofold role in telecommunications regulation: direct regulation of retail prices and service quality, and oversight of disputes between market participants. After HB 1231, the Commission's main role is to ensure a level

¹ FCTA represents cable telephony providers throughout the state of Florida who provide, by and large, the only facilities-based mass market telephony competition to Florida's ILECs. FCTA's six largest members include Atlantic Broadband, Advanced Cable, Bright House Networks, Comcast, Cox, and Mediacom.

playing field between competitors, so that the resulting competition can police both service quality and price.

Without direct retail regulation, the Commission's oversight of intercarrier relations – designed by the Legislature to maintain a properly functioning competitive market – is the Commission's *primary* role in safeguarding service quality and pricing for telecommunications. In HB 1231, the Florida legislature recognized that removal of retail oversight would result in cost savings to the Commission, and it instructed the Commission to reduce its budget to reflect those savings. The Commission, through the Staff, has now done so.

Already, the Commission's role in direct regulation of *retail* service was small as a result of substantial deregulation of incumbent LEC service in 2008. The Staff's proposed budget reflects a nearly 50 percent decrease from 2005, when the Commission still engaged proceedings such as COLR and direct retail regulation, and a substantial reduction from last year, when the Commission's telecommunication workload already consisted primarily of intercarrier matters. The Staff's proposed budget ensures sufficient funding exists to address intercarrier disputes, while also realizing savings from no longer having to regulate retail service, just as the Legislature intended.

ANALYSIS

I. **HB 1231 DEREGULATED RETAIL TELEPHONY SERVICE WHILE PRESERVING THE COMMISSION'S TRADITIONAL ROLE OF RESOLVING INTERCARRIER DISPUTES AND ENSURING A LEVEL PLAYING FIELD FOR COMPETITORS**

Cable operators in Florida employ thousands of people. The cable industry's overall impact on the state is estimated at over \$13 billion annually.² *Analysis of the Cable*

² *Analysis of the Cable Industry's Impact on the U.S. Economy*, Bortz Media & Sports Group, Inc., 2010 at 53.

Industry's Impact on the U.S. Economy, Bortz Media & Sports Group, Inc., 2010 at 53. Telephony represents one-third of cable's product mix, with video and high speed Internet access service making up the other two thirds.

Florida was one of the first states to mandate the opening of the local telephony market to competition. Florida enacted its first telecom competition statute in 1995, predating the federal Telecommunications Act of 1996 by one year. Nevertheless, residential telecommunications competition did not become firmly established until recently, with the advent of competition from cable VoIP providers. Cable VoIP subscribers increased from 300,000 in 2006 to nearly 1.7 million subscribers in 2010. During that time, the Commission intervened to resolve numerous competitive disputes on interconnection and other matters, as it continues to do today.

Federal law establishes the Commission as the primary forum for these competitive disputes. *See* 47 U.S.C. §§ 251-252. Over the years, the Florida legislature has also refined and strengthened the Commission's jurisdiction over competitive disputes by providing for "continued regulatory oversight of carrier-to-carrier relationships" in order to provide for "the development of fair and effective competition." Ch. 364.16(1), F.S. (added by HB 1231).

Competitors often turn first to the state forum, as the Commission routinely resolves disputes much more quickly than the Federal Communications Commission ("FCC") or a federal court. FCTA is currently involved in a dispute under the jurisdiction of the FCC and federal courts that began in the late 1990s, continues today and has already featured a decision by the U.S. Supreme Court. The FCC held a trial in that case in 2007, but did not issue a final ruling until 2010. The case is currently on appeal to the United States Court of Appeal for the D.C. Circuit, with a briefing schedule stretching into November 2011. That suit likely will not be fully resolved until 2012 at the earliest – over a decade of litigation and counting.

FCTA is also involved in a state court matter filed in 2005, which is still in the discovery phase in 2011. In contrast, the Commission routinely resolves intercarrier matters in less than 12 months. *See, e.g., In re: Petition by Comcast Phone of Florida, LLC for arbitration of an interconnection agreement with Quincy Telephone Company d/b/a TDS Telecom*, Docket No. 080731-TP, December 21, 2009 (filed December 29, 2008, and final order issued December 21, 2009). *Id.* at 1. Not only does the Commission possess institutional and subject matter expertise, it also typically resolves disputes much more quickly than the FCC and courts. This is not meant as a criticism of the FCC or the court system, which both have their strengths and different jurisdictional bases, but it does show the vital importance of the Commission in safeguarding competition and resolving intercarrier disputes.

Under the Commission's stewardship, competitive provider residential line counts have grown by hundreds of percent, yielding benefits for consumers in the form of greater choice and lower prices. Had the Commission not existed as a forum for competitive disputes, this growth in competition could have been derailed at many points. For instance, if Comcast still had to wait for a decision on its interconnection matter with TDS, customers would have been lost, as Comcast would not have been able to provide its service. Moreover, a failure to timely decide that case could have resulted in other LECs refusing to permit interconnection, as TDS had tried to do. The Commission's timely action ensured that Comcast and other cable telephony providers using the same technology could continue serving their customers with varied service offerings and competitive prices.

In HB 1231, the Legislature recognized the necessity of "continued oversight" of intercarrier disputes. Ch. 364.16(1), F.S. Florida's telephony market is highly competitive. Many industry observers consider the I-4 corridor to be one of the most competitive markets in the U.S. for video, Internet and telephony. As cable telephony expands into the business

market, additional disputes in that context will no doubt arise. The Commission's role as overseer is essential as long as a competitive market exists.

In addition, interconnection agreements and disputes will continue to be brought before the Commission for resolution, as provided for under federal law, as the existing agreements expire. The continued health of the competitive telecommunications market requires that the Commission have adequate funding to address and resolve competitive disputes. The Staff's proposed budget provides for such funding, and should be approved.

II. THE COMMISSION'S PROPOSED BUDGET FAIRLY IMPLEMENTS HB 1231

A. Since Deregulation in 2008-9, the PSC's Docket already consisted primarily of intercarrier matters.

The Consumer Choice Act of 2009, SB 2626, substantially deregulated ILEC retail service. That legislation provided that any "basic" regulated service, when combined with unregulated "non-basic" service was considered "unregulated" service. Ch. 364.02(9), F.S. Since the 2009 deregulation, the Commission rarely addressed matters relating to retail service.³ Instead, large, complex intercarrier disputes like the Comcast-TDS interconnection dispute, complaints filed by AT&T and Qwest, and various interconnection matters have dominated the Commission's telecommunications workload. The Commission's sole retail regulation matter during 2011 was a consumer refund matter involving Quincy Telecom/TDS. The Commission did address two consumer slamming matters earlier this year, prior to HB 1231's effective date, which were some of the first consumer slamming disputes the Commission had seen in many years. However, those disputes could still be addressed even after deregulation if brought by a carrier, because HB

³ Even before the Consumer Choice Act, the Commission rarely entertained retail regulation proceedings. Much of the Commission's workload from 2008 to the present, apart from intercarrier disputes, has involved proceedings to remove outdated retail pricing and service quality rules. LECs successfully obtained some deregulation from the Commission prior to the 2009 deregulation legislation.

1231 consolidated anti-slamming matters brought by carriers into the intercarrier dispute section, Chapter 364.16. See Ch. 364.16(5), F.S. (creating procedure for filing complaints to address anticompetitive behavior concerning “preferred carrier” freezes).

B. Staff's Proposed Budget Fairly Reflects the Priority Given to Resolution of Intercarrier Disputes by HB 1231, As Well As HB 1231's Intent to Reduce Costs Attributable to Retail Regulation.

HB 1231 consolidates the Commission's intercarrier dispute resolution functions from several different sections into Chapter 364.16, F.S., while removing the Commission's direct regulation of retail service, whether that service is provided by a CLEC or an ILEC. Revised Chapter 364.336 instructs the Commission to consider whether the lack of oversight over retail service will cause the Commission to need fewer resources. As the legislature intended, the Staff's proposed budget strikes the correct balance, by reducing staff and the regulatory assessment fee (“RAF”) percentage, while at the same time preserving sufficient resources to resolve intercarrier disputes.

The proposed budget for 2012-13 is just under \$4 million, after excluding state mandated service and trust fund charges of over \$600,000, based on a RAF percentage of .16 of regulated revenues. “Telecommunications Regulatory Assessment Fee, Comparison and calculation,” Commission Staff supplemental information e-mailed Aug. 23, 2011 at 1 (“RAF Calc. Form”). The proposed budget also deletes 27 full time equivalents (“FTEs”) from the headcount. Florida Public Service Commission, “Memorandum for the Record,” June 23, 2011 at 1. The Staff's proposed budget features:

- A smaller RAF percentage on smaller revenues. Total revenues subject to the RAF have decreased by nearly 50 percent since 2005.⁴ On these smaller revenues, the Staff proposes a decrease in RAF from 0.20 percent of revenues to 0.16 percent.

⁴ Revenues decreased from \$11.9 million in 2005 to a projected \$5.9 million in 2012-13. Total revenues decreased from \$6.9 million (projected) in 2011-12 to \$5.9 million in 2012. RAF Calc. Form at 1.

- A decrease in RAF percentage of 20% from the prior year, when the Commission's workload already contained primarily intercarrier dispute matters.

This budget correctly provides for the Commission's current role in resolving intercarrier disputes and its other duties reserved to it by the Legislature, such as numbering administration, Lifeline, and the annual Competition Report to the Legislature, among others. In reality, the Commission has been largely focused on intercarrier disputes, at least since 2008, and arguably for several years before then. Even so, the Staff's budget nonetheless reflects a substantial reduction from the prior year. In addition, the proposed budget shows a reduction in FTEs clearly attributable to retail oversight functions, such as operators devoted to answering customer complaint calls, which are no longer needed because retail service, whether basic or nonbasic is no longer regulated. Ch. 364.02(9).

A review of pending dockets prior to passage of HB 1231 shows very few "retail" regulation proceedings. Absent from the docket are any proceedings where the Commission addresses ILEC service quality or retail pricing. In contrast, wholesale disputes and interconnection matters predominate. And, even when such disputes are few in number, their complexity requires that they take up a larger share of Commission resources than did retail matters.⁵

CONCLUSION

The Commission proposes spending just under \$4 million to ensure the smooth functioning of a multi-billion dollar state telecommunications market. It shows reduction in FTEs related to functions that the Commission will no longer provide as a result of HB 1231's passage. At the same time, it provides sufficient resources for the Commission's

⁵ The docket typically contains many proceedings concerning dispositions of certificates. While large in number, those proceedings are often pro forma and do not require significant amounts of staff resources.

invaluable oversight of intercarrier disputes. The Staff's proposed RAF percentage strikes the right balance and should be adopted by the full commission.

Respectfully submitted this 29th day of August, 2011.

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