

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 19, 2014
TO: All Parties of Record and Interested Persons
FROM: Laura V. King, Economic Analyst, Division of Economics *LVK*
RE: 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. - Statement of Economic Regulatory Cost Data Request

On July 31, 2012, the Competitive Carriers of the South, Inc. filed a petition to initiate rulemaking to revise and amend portions of Rule 25-22.0365, Florida Administrative Code, Expedited Resolution Process for Telecommunications Companies. Two rule development workshops were held and written comments were filed subsequent to each workshop. A draft of the proposed rule is attached which incorporates some of the changes suggested in the written comments filed by various parties.

Staff is now in the process of preparing its Statement of Economic Regulatory Cost (SERC) as required by Chapter 120.541, Florida Statutes. In order to complete the SERC, we ask that you review the attached rule draft and provide information regarding the direct or indirect adverse economic impacts, if any, that you believe will result if the rule as proposed is adopted. A copy of Chapter 120.541(2), Florida Statutes, is also attached which specifically outlines the information that is needed to prepare the SERC.

You need only respond if you have specific comments regarding the direct or indirect adverse economic impacts of the draft rule. Comments, if any, should be sent via e-mail to lking@psc.state.fl.us by March 7, 2014. If you have any questions, you may contact me via e-mail or you may call 850-413-6588.

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1 **25-22.0365 Expedited Dispute Resolution Process for Telecommunications Companies.**

2 (1) The purpose of this rule is to establish an expedited process for resolution of disputes
3 between telecommunications companies (“companies”).

4 (2) To be considered for an expedited proceeding, the companies involved in the dispute must
5 have attempted to resolve their dispute informally. In the event that the parties are unable to
6 resolve their dispute independently, a party intending to invoke the expedited dispute
7 resolution process addressed herein shall, prior to filing a request under subparagraph (3),
8 notify Commission staff of the dispute and request that Commission staff conduct an informal
9 meeting. Such meeting shall be conducted within 7 days of the request for the purpose of
10 discussing the matters in dispute, the positions of the parties, possible resolution of the
11 dispute, any immediate effect on customers’ ability to receive service, anticipated discovery
12 needs, and case scheduling.

13 (3) To initiate the expedited dispute resolution process, the complainant company must file
14 with the Commission a request for expedited proceeding, direct testimony, and exhibits, and
15 must simultaneously serve the filing on the other company involved in the dispute. The
16 request for expedited proceeding is in lieu of the petition required by Rule 28-106.201, F.A.C.

17 (4) The request for expedited proceeding must include:

18 (a) The name, address, telephone number, facsimile number and e-mail address of the
19 complainant company and its representative to be served, if different from the company;

20 (b) A statement of the specific issue or issues to be litigated and the complainant company’s
21 position on the issue or issues;

22 (c) The relief requested;

23 (d) A statement attesting to the fact that the complainant company attempted to resolve the
24 dispute informally and the dispute is not otherwise governed by dispute resolution provisions
25 contained in the parties’ relevant interconnection agreement; and

- 1 (e) An explanation of why the use of this expedited process is appropriate. The explanation of
2 why use of the expedited process is appropriate shall include a discussion of the following:
- 3 1. The number and complexity of the issues;
 - 4 2. The policy implications that resolution of the dispute is expected to have, if any;
 - 5 3. The topics on which the company plans to conduct discovery, including a description of the
6 nature and quantity of information expected to be exchanged;
 - 7 4. The specific measures taken to resolve the dispute informally; and
 - 8 5. Any other matter the company believes relevant to determining whether the dispute is one
9 suited for an expedited proceeding.
- 10 (5) Any petition for intervention shall provide the information required by paragraphs (4)(a)-
11 (c) and (e) as it applies to the intervenor.
- 12 (6) The request for expedited proceeding shall be dismissed if it does not substantially comply
13 with the requirements of subsections (2), (3) and (4), above. The first dismissal shall be
14 without prejudice.
- 15 (7) The respondent company may file a response to the request. The response must be filed
16 within 7 14 days of the filing of the request for expedited proceeding.
- 17 (a) The response shall include the name, address, telephone number, facsimile number and e-
18 mail address of the respondent and the respondent's representative to be served, if different
19 from the respondent.
- 20 (b) The response to the request may include any information that the company believes will
21 help the Prehearing Officer decide whether use of the expedited dispute resolution process is
22 appropriate. Such information includes, but is not limited to:
- 23 ~~1. The respondent's willingness to participate in this process;~~
 - 24 1.2. Statement of the specific issue or issues to be litigated from the respondent's perspective,
25 and the respondent's position on the issue or issues;

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

- 1 ~~2.3.~~ A discussion of the topics listed in subparagraphs (4)(b)-(e)1.-5. above.
- 2 (8) No sooner than 7 14 days after the filing of the request for expedited proceeding, but
- 3 promptly thereafter, the Prehearing Officer will decide whether use of the expedited
- 4 proceeding is appropriate. The decision will be based on the factors provided in Section
- 5 364.16(6) ~~364.058(3)~~, F.S., the materials initially filed by the complainant company and, if a
- 6 response is filed, the materials included in the response.
- 7 (9) Unless otherwise provided by order of the Prehearing Officer, based on the unique
- 8 circumstances of the case, the schedule for each expedited case will be as follows:
- 9 (a) Day 0 – request for expedited proceeding, direct testimony and exhibits are filed;
- 10 (b) Day 7 14 – deadline for filing a motion to dismiss, and a response to the request for
- 11 expedited proceeding;
- 12 (c) Day 14 ~~21~~— deadline for filing a response to the motion to dismiss, if one is filed; ~~and,~~
- 13 (d) ~~(c)~~ Day 21 - deadline for filing petitions to intervene, and intervenor testimony and exhibits;
- 14 (e) ~~(d)~~ Day 42 – deadline for the Commission staff to file testimony;
- 15 (f) ~~(e)~~ Day 56 – deadline for the respondent to file rebuttal testimony.
- 16 (10) The Prehearing Officer shall decide whether post-hearing briefs will be filed or if
- 17 closing arguments will be made in lieu of post-hearing briefs. In making this decision the
- 18 Prehearing Officer will consider such things as the number of parties, number of issues,
- 19 complexity of issues, preferences of the parties, and the amount of testimony stipulated into
- 20 the record.
- 21 (11) The Commission shall make a decision on the dispute within 120 days of the complainant
- 22 company’s filing of the request for expedited proceeding, direct testimony and exhibits.
- 23 (12) Responses to discovery requests shall be made within 15 days of service of the discovery
- 24 requests, unless the Prehearing Officer decides otherwise based on the unique circumstances
- 25 of the case.

1 (13) Service of all documents on the parties shall be by e-mail; ~~faesimile~~ or hand delivery. An
2 ~~additional copy shall be furnished by hand delivery, overnight mail or U.S. mail if the initial~~
3 ~~service was by e-mail or faesimile.~~ Filing of all documents with the Commission shall be by
4 hand delivery, overnight mail or any method of electronic filing authorized by the
5 Commission.

6 (14) The applicability of this rule to the proceeding will be reassessed as factors affecting the
7 complexity of the case, number of issues, or number of parties change during the proceeding.

8 (15) Once the Prehearing Officer has determined that use of an expedited proceeding is
9 appropriate, nothing in this rule shall prevent the Prehearing Officer from making a later
10 determination that the case is no longer appropriate for an expedited proceeding based on the
11 number of parties, number of issues or the complexity of the issues. Nothing in this rule shall
12 prevent the Commission from initiating an expedited proceeding on its own motion.

13 *Rulemaking Authority 350.127(2), 364.16(6) FS. Law Implemented 364.16(6) FS. History—*
14 *New 8-19-04, Amended _____.*

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120.541 Statement of estimated regulatory costs.

- (2) A statement of estimated regulatory costs shall include:
- (a) An economic analysis showing whether the rule directly or indirectly:
 - 1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;
 - 2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or
 - 3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.
 - (b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.
 - (c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.
 - (d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.
 - (e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.
 - (f) Any additional information that the agency determines may be useful.
 - (g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.