

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
certificate to provide
alternative local exchange
telecommunications service by
Comm South Companies, Inc. d/b/a
Florida Comm South.

DOCKET NO. 001621-TX
ORDER NO. PSC-01-0477-PAA-TX
ISSUED: February 26, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER APPROVING SETTLEMENT OFFER
AND
NOTICE OF PROPOSED AGENCY ACTION ORDER
GRANTING CERTIFICATE TO PROVIDE ALTERNATIVE
LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding our granting a certificate to Comm South Companies, Inc. d/b/a Florida Comm South. to provide alternative local exchange telecommunications service is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On December 11, 1996, the Commission granted Comm South Companies, Inc. d/b/a Florida Comm South (f/k/a Onyx Distributing

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ORDER NO. PSC-01-0477-PAA-TX
DOCKET NO. 001621-TX
PAGE 2

Company, Inc. d/b/a Florida Comm South) Certificate No. 4757 to provide alternative local exchange telecommunications services in Florida.

On June 25, 1999, the Commission mailed a certified letter to the company requesting information necessary for inclusion in the local competition report required of the Commission by Section 364.386, Florida Statutes. On December 6, 1999, a second certified letter requesting the data by December 22, 1999, was sent. No response was received.

In Docket No. 000230-TX the Commission issued on April 12, 2000, Order No. PSC-00-0680-SC-TX for apparent violation of Section 364.183(1), Florida Statutes. Florida Comm South was ordered to show cause in writing within 21 days of the date of the order why it should not be fined or have its certificate canceled for not responding to the data request. The company did not respond to the order and on May 25, 2000, Certificate No. 4757 was administratively canceled and the show cause docket closed.

By letter dated October 4, 2000, Florida Comm South informed Commission staff that due to corporate office relocation and personnel changes the company had failed to respond to the Commission's data request. The company stated that the show cause recommendation and order were not received by the appropriate company personnel due to the corporate relocation. The company further stated that it was not aware its certificate had been canceled until September 2000, when one of its sales agents was informed that Florida Comm South was no longer certificated. The company requested that its certificate be reinstated or that the company be granted a new certificate and offered a settlement of \$3,500, establishment of procedures to prevent similar incidents and submission of the data for the local competition report.

After review of the settlement offer and discussions with Commission staff, by letter dated October 27, 2000, the company submitted an application for a new certificate, a response to the 2000 ALEC data request, an offer of an amended settlement amount of \$7,500 to be paid within 20 days of the issuance date of the Commission Order, and an agreement to establish procedures for complying with Commission filing requirements and data requests.

ORDER NO. PSC-01-0477-PAA-TX
DOCKET NO. 001621-TX
PAGE 3

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.285, 364.335 and 364.337, Florida Statutes.

SETTLEMENT OFFER

In the October 27, 2000, settlement offer Florida Comm South proposed a monetary settlement of \$7,500 and committed to the establishment of procedures to prevent similar incidents from reoccurring which led to the opening of the Show Cause Docket No. 000230-TX and the cancellation of Certificate No. 4757.

The Commission has approved settlement offers of \$3,500 and \$4,000 from other companies that neither provided the requested information nor presented evidence of reasonable mitigating factors to account for their failure to provide the Commission requested information.

Upon consideration, we find that the terms of the settlement offer are fair and reasonable. Therefore, we accept Florida Comm South's offer of settlement. The \$7,500 contribution shall be received by the Commission within 20 days from the issuance date of this Order and shall identify the docket number and company name. We shall forward the contribution to the Office of Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

CERTIFICATE

Section 364.337(1), Florida Statutes, reads in part:

The commission shall grant a certificate of authority to provide alternative local exchange service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

Florida Comm South filed an application with this Commission on October 27, 2000, to offer alternative local exchange telecommunications service in Florida. A review of the application indicates that the company appears to meet the requirements of Section 364.337(1), Florida Statutes.

Even though the Commission canceled Florida Comm South's certificate in 2000, due to its failure to respond to the data request and to Order No. PSC-00-0680-SC-TX, we accept the company's representation that these were oversights which will not occur again. Therefore, Florida Comm South's application for certificate to provide alternative local exchange telecommunications service is hereby granted upon timely receipt of the \$7,500 voluntary settlement offer.

If this Order becomes final and effective, it will serve as Florida Comm South's certificate. It should, therefore, be retained by Florida Comm South as proof of certification.

ALEC providers are subject to Chapter 25-24, Florida Administrative Code, Part XV, Rules Governing Telecommunications Service Provided by Alternative Local Exchange Companies. ALEC providers are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapters 25-4, Florida Administrative Code.

In addition, Section 364.337(2), Florida Statutes, requires ALECs which provide basic local telecommunications service to provide access to 911 services. This Commission has no rules specifying the 911 services that either an Incumbent Local Exchange Company (ILEC) or an ALEC must provide; however, 911 service that is inferior to that provided by the ILEC would clearly not be in the public interest. Accordingly, we find that Section 364.337(2), Florida Statutes, requires ALECs which provide basic local telecommunications services to provide at least the same level of 911 services as that provided by the ILEC serving the same area.

Further, under Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee (RAFs) of \$50 if the certificate was active during any portion of the calendar year. A RAFs Return notice will be mailed each December to Florida Comm South. Neither the cancellation of the certificate

ORDER NO. PSC-01-0477-PAA-TX
DOCKET NO. 001621-TX
PAGE 5

nor the failure to receive a RAFs Return notice shall relieve Florida Comm South from its obligation to pay RAFs.

Upon timely remittance of the \$7,500 voluntary settlement offer, and if no person whose substantial interests are affected by the Commission's decision in regards to the approval of the application to provide alternative local exchange telecommunications services files a protest within 21 days of the issuance of this Order, this docket shall be closed upon the issuance of a Consummating Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement proposed by Comm South Companies, Inc. d/b/a Florida Comm South, is hereby approved and shall be remitted to this Commission within 20 days of the issuance of this Order. It is further

ORDERED that if Comm South Companies, Inc. d/b/a Florida Comm South remits the settlement offer within 20 days from the issuance of this Order, we hereby grant Certificate No. 7742 to Comm South Companies, Inc. d/b/a Florida Comm South, which shall authorize it to provide Alternative Local Exchange Telecommunications service, subject to the terms and conditions stated in the body of this Order. It is further

ORDERED that this Order shall serve as Comm South Companies, Inc. d/b/a Florida Comm South's certificate and should be retained by Comm South Companies, Inc. d/b/a Florida Comm South as proof of certification. It is further

ORDERED that each Alternative Local Exchange Telecommunications company which provides basic local telecommunications services shall provide at least the same level of 911 services as that provided by the incumbent local exchange company serving the same area. It is further


ORDERED that the provisions of this Order regarding approval of a certificate to provide alternative local exchange services, are issued as proposed agency action and shall become final and effective upon the receipt of the timely remittance of the \$7,500

ORDER NO. PSC-01-0477-PAA-TX
DOCKET NO. 001621-TX
PAGE 6

voluntary settlement offer and issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event the Proposed Agency Action portions of this Order become final and the \$7,500 voluntary settlement is filed within 20 days from the issuance of this Order, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of February, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action regarding approval of a certificate is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 19, 2001. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any party adversely affected by the Commission's final action regarding acceptance of a settlement offer in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.