

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Effectel Corp for apparent failure to accurately disclose information on application.	DOCKET NO. 080674-TP ORDER NO. PSC-09-0063-PAA-TP ISSUED: January 28, 2009
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The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING VOLUNTARY FORFEITURE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein 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.

**I. Case Background**

On January 27, 2005, Effectel Corp (Effectel) registered as an intrastate interexchange telecommunications company (IXC) in Florida. The company was assigned IXC Registration No. TJ982. On July 20, 2006, we issued Proposed Agency Action (PAA) Order No. PSC-06-0615-PAA-TI, in Docket No. 060466-TI, In re: Compliance investigation of IXC registration holders for apparent first-time violation of Section 364.336, F.S. This Commission penalized Effectel \$500 for failing to pay its 2005 regulatory assessment fee (RAF). The company retained its IXC registration by paying the RAF and penalty.

Effectel failed to pay the RAF on its IXC registration for a second time. On August 27, 2007, we issued PAA Order No. PSC-07-0696-PAA-TI, in Docket No. 070493-TI, In re: Compliance investigation of IXC registration holders for apparent second-time violation of Section 364.336, F.S. This Commission penalized Effectel \$1,000 for failing to pay its 2006 RAF. Again, the company retained its IXC registration by paying the RAF and penalty. PSC-09-0063-PAA-TP

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FPSC-COMMISSION CLERK

On June 3, 2005, we granted Effectel Certificate No. 8581 to provide competitive local exchange company (CLEC) services in Florida. On July 20, 2006, we issued PAA Order PSC-06-0611-PAA-TX in Docket No. 060462-TX, In re: Compliance investigation of CLEC certificate holders for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. This Commission penalized Effectel \$500 for failing to pay its 2006 RAF. The company paid the RAF and penalty, retaining its CLEC certificate.

On November 16, 2006, we issued PAA Order No. PSC-06-0955-PAA-TX in Docket No. 060623-TX, In re: Compliance investigation of EFFECTEL CORP for apparent violation of Section 364.183(1), F.S., Access to Company Records. Effectel was penalized \$10,000 for failing to respond to our staff's request seeking data for the 2006 local competition report required by Section 364.386, Florida Statutes. Effectel failed to respond to the Order and its CLEC certificate was cancelled.

On October 31, 2007, Effectel reapplied for a CLEC certificate. On May 14, 2008, we issued PAA Order No. PSC-08-0319-PAA-TX in Docket No. 070670-TX, In re: Application for certificate to provide competitive local exchange telecommunications service by Effectel Corp. We accepted Effectel's settlement offer and approved Effectel's application. As part of its settlement, the company hired an independent consulting company to handle its regulatory affairs to preclude any future compliance issues such as those described above. We assigned the company CLEC Certificate No. 8716 which became effective on June 9, 2008.

On August 25, 2008, we received an e-mail from Mr. Carlos Bernal. Mr. Bernal stated that he was surfing the Internet and found a document numbered 09902 Oct-31-07 FPSC COMMISSION CLERK, referring to an Application Form for Authority to Provide Competitive Local Exchange Telecommunication Company Service within the State of Florida. Mr. Bernal alleged that information in the resume of Ms. Maria del Carmen Hernandez Cuervo was false. He stated that the information in Ms. Cuervo's resume was taken from his wife, Ms. Sonia Marcela Bastidas. Mr. Bernal claimed that almost all of the personal data belongs to his wife. It was his belief that Mr. Mario Safi presented false information (to this Commission) to maintain the license in the United States.

Our staff determined that the document Mr. Bernal referenced in his e-mail was Effectel's CLEC application in Docket No. 070670-TX. Our staff communicated with Mr. Bernal via e-mail on several occasions between August 26, 2008 and September 10, 2008.

Our staff contacted Effectel's regulatory consultant seeking a response to the allegations in Mr. Bernal's e-mail. In a letter dated September 17, 2008, Effectel reported that three of the resumes submitted with its CLEC application in Docket No. 070670-TX contained errors. Effectel submitted revised resumes and personal identification documents (all notarized) for each affected employee. Effectel explained that a customer service employee prepared the original resumes, both Spanish and English versions, that were submitted to our staff during the CLEC application process in Docket No. 070670-TX. Effectel stated that its management failed to review the resumes that were submitted during the application process.

In a letter dated November 6, 2008, Effectel has offered to voluntarily forfeit its CLEC Certificate No. 8716, voluntarily forfeit its IXC Registration No. TJ982, and to cease doing business in Florida in order to resolve its apparent failure to accurately disclose information on the CLEC application in Docket No. 070670-TX.

We are vested with jurisdiction in this matter pursuant to Sections 364.285, 364.335, 364.337, 364.345, Florida Statutes.

## II. Analysis

Section 364.335(1)(a)&(d), Florida Statutes, Application for a Certificate, states:

(1) Each applicant for a certificate shall:

(a) Provide all information required by rule or order of the commission, which may include a detailed inquiry into the ability of the applicant to provide service, .

...

(d) Submit an affidavit that the applicant has caused notice of its application to be given to such persons and in such manner as may be prescribed by commission rule.

Further, Section 364.337(1), Florida Statutes, provides in part that this Commission shall grant a certificate of authority to provide competitive local exchange service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service. Rule 25-24.810, Florida Administrative Code (F.A.C.), Application for a Certificate, requires that an applicant for a certificate shall submit a completed Form PSC/CMP 8 (11/95) entitled "Application Form for Authority to Provide Competitive Local Exchange Service Within the State of Florida," and is incorporated into this rule by reference.

Form PSC/CMP 8 (11/95) contains a section whereby the applicant is required to submit resumes of employees and officers of the company that would indicate sufficient managerial and technical experience to manage, operate, and maintain a telecommunications company. Effectel submitted resumes in its application for a CLEC certificate in Docket No. 070670-TX. We authorized Effectel to be a CLEC based upon the resumes and other information provided by Effectel in its application.

Via an unsolicited e-mail from a third party, this Commission and our staff learned that a resume in Effectel's application may be flawed. Effectel acknowledged that three of the resumes submitted with its CLEC application were flawed. Effectel was not able to explain how the errors occurred, e.g., it did not know if the errors were made intentionally or unintentionally by an employee that was tasked to prepare the resumes. Effectel's management failed to review the resumes before submitting them to this Commission.

In discussions with Effectel's representative, our staff expressed concern about the company's management capabilities. Our staff discussed Effectel's recent history regarding four compliance dockets (presented in the Case Background) established for the company's apparent failures to comply with this Commission's rules. Our staff also advised the representative that a compliance docket would be initiated to investigate Effectel's failure to accurately disclose information on its CLEC application in Docket No. 070670-TX.

#### Effectel's Offer

Effectel claims that its offer is based on personal illness in the family, general economic difficulties, and difficulties in starting its business. Effectel provided that it made no sales or served any customers during 2008, nor does it hold any customers' deposits. To resolve matters in this docket, Effectel offers:

1. to voluntarily forfeit CLEC Certificate No. 8716 and IXC Registration No. TJ982, in lieu of paying a \$2,500 penalty;
2. to pay the 2008 regulatory assessment fees for both its CLEC certificate and IXC registration (payment has been received by this Commission);
3. to not renew its corporate registration with the Florida Secretary of State; and
4. to close the business as of December 31, 2008.

Additionally, our staff notes that there have been no customer complaints filed against Effectel.

### **III. Decision**

Therefore, we find it appropriate to hereby accept Effectel Corp's offer to voluntarily forfeit CLEC Certificate No. 8716 and IXC Registration No. TJ982 to resolve the company's apparent failure to accurately disclose information in Docket No. 070670-TX, application for a certificate of public convenience and necessity to provide telecommunications services within the State of Florida as a competitive local exchange company.

This Order shall become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by our decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. Effectel shall immediately cease and desist providing all intrastate telecommunications services in Florida. Effectel's CLEC certificate and IXC registration shall become inactive on December 31, 2008. If there is no protest, this docket should be closed upon issuance of the Consummating Order.


Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Effectel Corp's offer to voluntarily forfeit CLEC Certificate No. 8716 and IXC Registration No. TJ982 to resolve the company's apparent failure to accurately disclose information in Docket No. 070670-TX, application for a certificate of public convenience and necessity to provide telecommunications services within the State of Florida as a competitive local exchange company is hereby granted as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, F.A.C., is received by the Office of Commission Clerk, 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 this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 28th day of January, 2009.

  
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ANN COLE  
Commission Clerk

( S E A L )

TJB

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

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.

The action proposed herein 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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 18, 2009.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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