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State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: January 6, 2005

TO: Hong Wang, Management Review Specialist, Commission Clerk & Administrative Services

FROM: Kira Scott, Attorney, Office of the General Counsel *KS*

RE: Docket No. 040976-TX—Application for certificate to provide competitive local exchange telecommunications service by Utility USA, Inc.

Mr. Abby Matari, CEO/Corporate Development for FLATEL, Inc., sent a letter with an attachment in response to staff's letter, dated December 15, 2004, via e-mail on January 3, 2005. Please include FLATEL, Inc.'s letter with attachment, dated January 3, 2005, in the above-referenced docket.

If you should have any questions, please contact Kira Scott at 413-6216.

KS

cc: Division of Competitive Markets and Enforcement (Hawkins)
Division of Competitive Markets and Enforcement (Kennedy)

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Florida Telephone Co.
Telephone USA
2300 Palm Beach Lakes Blvd.
Executive Center, Suite 210
West Palm Beach, FL 33409

Abby Matari
P. 561-688-2525 Ext 102
F. 561-688-7334
E. Amatari@Flatel.net
W. www.Flatel.net

January 3, 2005

Florida Public Service Commission
Tallahassee, FL 32399-0850

RE: Docket No. 040976-TX – Application for certificate to provide competitive local exchange telecommunications service by Utility USA, Inc.

Ms. Scott:

We feel that it is in the public's best interest that FLATEL advise the Florida Public Service Commission NOT issue a certificate to Utility USA, Inc., Docket No. 040976-TX to provide competitive local exchange telecommunications service.

It is FLATEL's objective to direct the Commission review the FPSC Staff's recommendation to NOT grant Utility USA, Inc. certification. The recommendation from the FPSC website is as follows: "**RECOMMENDATION:** No. The Commission should not accept Utility USA, Inc.'s offer to settle and should not grant Utility USA, Inc. Florida Public Service Commission Certificate No. 8419 to provide competitive local exchange telecommunications service within the State of Florida as provided by Section 364.337, Florida Statutes. The company should be required to immediately cease and desist providing competitive local exchange telecommunications service in Florida. (T. Williams, R. Kennedy, Rojas)".

Attached for your review is the Memorandum dated December 4, 2003, which will provide you with this information and much more.

If you have any questions or concerns regarding this letter, please contact our corporate office at the information provided in our letterhead.

Best Regards,

A handwritten signature in black ink, appearing to read "Abby Matari", written over a light gray rectangular background.

Mr. Abby Matari
CEO / Corporate Development

State of Florida

REVISED

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:DECEMBER 4, 2003

TO:DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM:DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (T. WILLIAMS, R. KENNEDY)
OFFICE OF THE GENERAL COUNSEL (ROJAS)

RE:DOCKET NO. 030873-TX - APPLICATION FOR CERTIFICATE TO PROVIDE COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE BY UTILITY USA, INC. D/B/A OSCATEL TELECOMMUNICATIONS.

AGENDA:12/16/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES:NONE

SPECIAL INSTRUCTIONS:REVISED RECOMMENDATION - ORIGINALLY FILED ON NOVEMBER 20, 2003, AND DEFERRED AT STAFF'S REQUEST

FILE NAME AND LOCATION:S:\PSC\CMP\WP\030873R.RCM

CASE BACKGROUND

Staff filed a recommendation in this Docket on November 20, 2003. After the filing, staff obtained additional information (described in Part 4 of the Case Background) that has caused staff to reevaluate its position and modify its recommendation from that originally filed on November 20, 2003.

The Case Background contains four parts. Part 1, Corporate Business Relationships of Mr. Oscar Nodarse, provides a brief history of the corporate business relationships of Mr. Oscar Nodarse, vice-president, Utility USA, Inc., with other corporations that have held or currently hold certificates of public convenience and necessity with the Commission. Part 2, Staff Interaction, is a narrative describing interaction between staff, corporations in which Mr. Nodarse served as either an officer or director, and other telecommunications companies. Part 3, Activity of Utility USA, Inc., describes events occurring after Utility USA, Inc. filed its Application Form for Authority to Provide Competitive Local Exchange Service Within the State of Florida. Part 4, Further Findings, provides additional information staff obtained after filing a recommendation on November 20, 2003, that the Commission accept Utility USA, Inc.'s offer to settle this Docket.

Part 1 - Corporate Business Relationships of Mr. Oscar Nodarse

- January 14, 1998 - FLATEL, Inc. d/b/a Florida Telephone Company was granted authority by the Commission, in Proposed Agency Action (PAA) Order PSC-98-0093-FOF-TX (Docket No. 971434-TX), to operate as a competitive local exchange telecommunications company (CLEC) in Florida. The company's application was filed by Mr. Nodarse on November 3, 1997.
- December 3, 1998 - FLATEL, Inc. d/b/a Florida Telephone Company filed an Application for Reinstatement (Attachment A) as a registered corporation with the Florida Department of State, Division of Corporations. Mr. Nodarse was listed as director, president, secretary, and treasurer on the filing. Staff does not know the date FLATEL, Inc. originally filed as a registered corporation.
- February 18, 1999 - FLATEL, Inc. d/b/a Florida Telephone Company filed Amended and Restated Articles of Incorporation (Attachment B) with the Florida Department of State, Division of Corporations. Mr. Nodarse signed the Amended and Restated Articles of Incorporation.
- July 12, 1999 - FLATEL, Inc. d/b/a Florida Telephone Company filed a Profit Corporation Annual Report (Attachment C) with the Florida Department of State, Division of Corporations. The document shows that Mr. Nodarse was deleted as an officer of FLATEL, Inc.

- November 8, 1999 - Telebeeper, Inc. filed Articles of Incorporation (Attachment D) with the Florida Department of State, Division of Corporations. Mr. Nodarse filed the Articles and was identified as the president of Telebeeper, Inc.
- February 9, 2000 - Telebeeper, Inc. filed an Application for Registration of Fictitious Name (Attachment E) for **Oscatel Communications** with the Florida Department of State, Division of Corporations. Mr. Nodarse filed the Application.
- March 2, 2000 - Telebeeper, Inc. was granted authority by the Commission, in Consummating Order PSC-00-0440-CO-TX which made PAA Order PSC-00-0271-PAA-TX effective and final (Docket No. 991739-TX), to operate as a CLEC in Florida. Mr. Nodarse filed the application with the Commission on November 19, 1999.

- December 12, 2000 - Telebeeper, Inc.'s request to add **Oscatel Communications** as a doing-business-as name on CLEC Certificate 7341 was approved by the Commission in Order PSC-00-2380-FOF-TX (Docket No. 001697-TX).
- August 16, 2001 - FLATEL, Inc. d/b/a Florida Telephone Company filed an Application for Registration of Fictitious Name (Attachment F) with the Florida Department of State, Division of Corporations adding **Oscatel** as a fictitious name.
- November 20, 2001 - FLATEL, Inc. d/b/a Florida Telephone Company obtained acknowledgment by the Commission, in Order PSC-01-2281-FOF-TX (Docket No. 011121-TX), of a name change on CLEC Certificate No. 5315. FLATEL, Inc. d/b/a Florida Telephone Company added d/b/a **Oscatel** and d/b/a Telephone USA to its certificate.
- January 4, 2002 - Telebeeper, Inc. d/b/a **Oscatel Communications'** CLEC Certificate was cancelled by the Commission, in Consummating Order PSC-02-0042-CO-TX which made PAA Order PSC-01-2411-PAA-TX effective and final (Docket No. 011278-TX), for non-payment of regulatory assessment fees. The certified mail copy of the PAA Order was returned to the Commission marked as "Moved-Left-No-Address." Telebeeper, Inc. d/b/a **Oscatel Communications** did not pay any regulatory assessment fees (years 2000, 2001, and 2002) after its initial certification by the Commission.
- April 11, 2002 - FLATEL, Inc. filed a Uniform Business Report (Attachment G) with the Florida Department of State, Division of Corporations. The filing added Mr. Nodarse as CEO/Director of Business Development for FLATEL, Inc.
- October 4, 2002 - Telebeeper, Inc.'s corporate registration was administratively cancelled by the Florida Department of State, Division of Corporations, for failing to file an annual report. See Attachment H.
- August 22, 2003 - Utility USA, Inc. filed Electronic Articles of Incorporation (Attachment I) with the Florida Department of State, Division of Corporations. The filing listed Mr. Oscar Carvajal and Mr. Oscar Nodarse as initial officers and/or directors of the corporation.
- August 26, 2003 - Utility USA, Inc. filed an Application for Registration of Fictitious Name (Attachment J) with the Florida Department of State, Division of Corporations. Utility USA, Inc. registered **Oscatel Telecommunications** as a fictitious name.
- September 2, 2003 - FLATEL, Inc. filed Articles of Amendment to Articles of Incorporation of FLATEL, Inc. (Attachment K) with the Florida Department of State, Division of Corporations. FLATEL, Inc. removed Mr. Oscar Nodarse from FLATEL, Inc. The reason provided was that Mr. Nodarse was no longer with FLATEL, Inc. as of August 18, 2003.
- September 2, 2003 - Utility USA, Inc. d/b/a **Oscatel Telecommunications** submitted an Application Form for Authority to Provide Competitive Local Exchange Service within the State of Florida (Application, Attachment L) with the Commission. The Application listed Mr. Oscar Nodarse as Utility USA, Inc. d/b/a **Oscatel Telecommunications'** vice-president.

Part 2 - Staff Interaction

This section of the discussion provides snapshots of instances in which third parties claim Mr. Oscar Nodarse or his corporations are causing them harm in some fashion or other. Staff also provides documentation that demonstrates Telebeeper, Inc. d/b/a Oscatel Communications may have misrepresented facts to staff regarding placement of local service freezes on customers accounts.

In addition, staff provides documents that show Telebeeper, Inc. d/b/a Oscatel Communications failed to pay BellSouth Telecommunications for wholesale services, and then, either sold or voluntarily moved its customer base to FLATEL, Inc. These actions occurred during the fourth quarter of 2001. Mr. Nodarse eventually joined FLATEL, Inc. and was registered as an officer of FLATEL, Inc. on April 11, 2002. Staff surmises that the d/b/a "Oscatel", and variations thereof, may have been used to maneuver customers from one local service provider to another, causing customer harm and confusion, and creating operational complications or financial hardships for other telecommunications providers.

On November 13, 2000, staff notified Telebeeper, Inc., via letter (Attachment M), about the company's actions of improperly placing local service freezes on its customers accounts. The letter also advised Telebeeper, Inc. that it was improperly using the d/b/a Oscatel. Telebeeper, Inc. did not respond to staff's November 13, 2000, letter. In an attempt to solicit a response, staff called the company and spoke with Mr. Tulio Rodriguez. Mr. Rodriguez indicated his desire to follow Commission rules and stated that the company was not placing freezes on accounts, and he stated that Telebeeper, Inc. would file a request to add the d/b/a Oscatel Communications to its CLEC certificate. As a follow-up to the phone communication with Mr. Rodriguez, staff mailed a letter (Attachment N) to Telebeeper, Inc. d/b/a Oscatel Communications dated December 5, 2000. Staff suggested a manner, where Telebeeper, Inc. d/b/a Oscatel Communications could add information to its Letter of Authorization, allowing the customer a choice of selecting or denying a local service freeze. Staff's impression was that Telebeeper, Inc. d/b/a Oscatel Communications would only place freezes on a customer's account when requested by the customer. In the next few paragraphs, staff provides documentation that suggests Telebeeper, Inc. d/b/a Oscatel Communications may have continued to place local service freezes on most, if not all, of its customers accounts.

On October 10, 2001, staff received a customer complaint against FLATEL, Inc. In the process of the investigation, staff sensed that customers of Telebeeper, Inc. d/b/a Oscatel Communications may be migrating to FLATEL, Inc. Staff contacted BellSouth Telecommunications to verify if customers of Telebeeper, Inc. d/b/a Oscatel Communications were being transferred to FLATEL, Inc. BellSouth Telecommunications' representative acknowledged that Telebeeper, Inc. d/b/a Oscatel Communications was in arrears in its payments for wholesale services, however, the representative did not know if customers were migrating and even if they were, believed it improper to discuss customers of CLECs with staff because it may violate privacy laws. Subsequently, the Commission issued a subpoena to BellSouth Telecommunications requesting information regarding migration of customers from Telebeeper, Inc. d/b/a Oscatel Communications to FLATEL, Inc. Staff provides portions (Attachment O) of the data obtained from BellSouth Telecommunications in response to the Commission's subpoena. Attachment O, dated October 16, 2001, clearly indicates that there were freezes on customers' local service as Telebeeper, Inc. d/b/a Oscatel

Communications was requesting that BellSouth Telecommunications remove the freezes so that its customers could be switched to FLATEL, Inc. Staff notes that there were more than 600 customers names and phone numbers on the list Telebeeper, Inc. d/b/a Oscatel Communications submitted to BellSouth Telecommunications in its request to remove local service freezes.

Staff investigating the complaint described in the previous paragraph later learned that BellSouth Telecommunications sent two e-mails (Attachment P) dated August 9, 2001, and November 8, 2001, to Commission staff. The subjects of both e-mails are disconnection of services to Telebeeper, Inc. scheduled for August 16, 2001, and rescheduled for November 27, 2001, for nonpayment of past due accounts. The points staff is attempting to make are two-fold: 1) Telebeeper, Inc. d/b/a Oscatel Communications appears to have continued to place local service freezes on its customers accounts even though it convinced staff otherwise; and 2) Telebeeper, Inc. d/b/a Oscatel Communications' management either sold or negotiated the move of its customer base to another carrier just prior to the final disconnect notice for non-payment from BellSouth Telecommunications. Staff further notes that Mr. Nodarse eventually joined the management team at FLATEL as the Chief Information Officer and FLATEL, Inc. added the d/b/a Oscatel to its CLEC certificate on November 20, 2001. An owner or officer of a CLEC that does not pay the wholesale provider, then transitions the customer base to another CLEC, and then joins that CLEC as a management person are "management capability" factors to consider (Section 364.337, Florida Statutes), in making a positive or negative recommendation to the Commission, when that same owner or officer is seeking approval to operate another CLEC in Florida.

What follows, is an example of a complaint filed against Mr. Nodarse by another telecommunications company. In a letter (Attachment Q) to the Commission dated January 3, 2001, Mr. Paul Joachim, Florida Telephone Services, LLC, claims that Mr. Charles Agero of Montezuma, Inc. and Mr. Oscar Nodarse of Telebeeper, Inc. d/b/a Oscatel Communications were switching customers by telling the customers that Florida Telephone Services had changed its name to Oscatel. Mr. Joachim obtained legal counsel and copies of counsel's letters to Mr. Agero and Mr. Nodarse are included in Attachment Q. Apparently Montezuma, Inc. was serving as an agent for Florida Telephone Services, LLC and at some point entered into an arrangement whereby it would serve as an agent of Telebeeper, Inc. d/b/a Oscatel Communications.

Several more examples of staff involvement with complaints filed by other telecommunications companies against Telebeeper, Inc. d/b/a Oscatel Communications and FLATEL, Inc. d/b/a Oscatel are provided in Attachment R. The examples are: 1. USA Telephone Inc. requested assistance from staff to get a local service freeze removed; 2. Budget Phone notified staff that FLATEL, Inc. disconnected a customer rather than removing the local service freeze so the customer could transfer to Budget Phone and retain the same telephone number; and 3. staff notified Telebeeper, Inc. d/b/a Oscatel Communications, via e-mail, that a local service freeze was preventing a customer from selecting a new provider. The dates of these documents range from December 4, 2001, to April 17, 2002. Staff has included these examples to demonstrate the complications that have arisen because of the various uses of the d/b/a "Oscatel" by the companies with which Mr. Nodarse has been affiliated.

Part 3 - Activity of Utility USA, Inc.

On August 29, 2003, Utility USA, Inc. d/b/a OSCATEL Telecommunications filed an application (Attachment L) for CLEC certification.

Question 16 of the application lists Mr. Oscar Carvajal as president and Mr. Oscar Nodarse as vice-president of Utility USA, Inc. Question 15 of the application requires the applicant to indicate if any of the officers, directors, or any of the ten largest stockholders have previously been an officer, director, partner or stockholder in any other Florida certificated telephone company. It also requires that the applicant name the company and describe the relationship with the company and give the reason why the individual is no longer associated with the company. The applicant answered question 15 that Oscar Nodarse is the Chief Information Officer (CIO) of FLATEL, Inc. On August 29, 2003, staff received notification (Attachment S) from Mr. Abby Matari, Chief Executive Officer (CEO) of FLATEL, Inc. that Mr. Oscar Nodarse had been terminated on August 18, 2003, and was no longer employed by FLATEL, Inc. This appears to be an error in Utility USA, Inc.'s Application filed with the Commission on August 29, 2003.

In Exhibit VI of the application (Attachment L), Mr. Nodarse's resume lists him as the founder of FLATEL, Inc. and the founder and current president of Telebeeper, Inc. The applicant failed to list in question 15 of the application that Mr. Nodarse was an officer with Telebeeper, Inc. Mr. Nodarse, vice-president of Utility USA, Inc. is or was an officer of at least two companies that operated as competitive local exchange companies in Florida, namely FLATEL, Inc. and Telebeeper, Inc.

In question 17 of the application, the applicant lists that it has operated as a competitive local exchange company in Florida and is certificated to operate as a competitive local exchange company in Florida. Staff notes that Utility USA, Inc. is not certificated to operate as a competitive local exchange company in Florida. Further, question 17 of the application requires that the applicant respond if it has had regulatory penalties imposed for violations of telecommunications statutes and provide the circumstances involved. Utility USA, Inc. as a corporation appears not to have any regulatory penalties against it, however, the company officers in this case, based on answers in other portions of the application, appear to be completing the application based upon their personal experiences in the telecommunications industry. In doing so, it would be appropriate to disclose that penalties were imposed on Telebeeper, Inc., of which Mr. Nodarse claims to be the founder and current president. At the very least, Mr. Nodarse should have been identified as an officer of Telebeeper, Inc. in question 15 of the Application, which requires Utility USA, Inc. to list any of its officers that have previously been an officer in any other Florida certificated telephone company.

On December 12, 2001, the Commission issued Proposed Agency Action (PAA) Order PSC-01-2411-PAA-TX, in Docket No. 011278-TX, Cancellation by Florida Public Service Commission of Alternative Local Exchange Telecommunications Certificate No. 7341 issued to Telebeeper, Inc. d/b/a Oscatel Communications for violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees: Telecommunications Companies. Telebeeper, Inc. failed to reply to the PAA Order, thus the Commission issued Consummating Order PSC-02-0042-CO-TX on January 4, 2002, making Order PSC-01-2411-PAA-TX effective and final.

Staff has received several complaints from Mr. Abby Matari, CEO of FLATEL, Inc. One example of Mr. Matari's complaints is provided as Attachment T. Mr. Matari advised staff that he had received a Local Freeze Removal Notice (Attachment U) from Utility

USA, Inc., dated August 26, 2003. Mr. Matari also alleged slamming activity by Mr. Nodarse and requests that the Commission deny granting Utility USA, Inc. a CLEC certificate. (Attachment V).

Another company Mr. Nodarse has involvement with is Telephone One Inc. This company is a certificated competitive local exchange company and was used by Mr. Nodarse to move customers away from FLATEL, Inc. On September 10, 2003, staff contacted Mr. Osvaldo Fernandez, with Telephone One Inc., and requested an explanation of his company's involvement with Mr. Nodarse and Utility USA, Inc. Mr. Fernandez claimed that Mr. Nodarse had approached him and explained about a disagreement between Mr. Nodarse and Mr. Matari. Mr. Nodarse claimed that he was to obtain approximately 300 of FLATEL, Inc.'s customers as part of a negotiated departure by Mr. Nodarse from FLATEL, Inc. Because Mr. Fernandez knew Mr. Nodarse and Mr. Nodarse needed an avenue to serve customers, Mr. Fernandez agreed to provide local telephone service to Utility USA, Inc.'s customers until Utility USA, Inc. obtained certification from the Commission. When certification was approved by the Commission, Mr. Nodarse would move the customers from Telephone One Inc. to Utility USA, Inc. When asked if the Local Freeze Removal Notice (Attachment U) was the authorization Telephone One Inc. was using to switch the customers' service from FLATEL, Inc. to Telephone One Inc., Mr. Fernandez stated that it was. Staff then advised Mr. Fernandez that the Local Freeze Removal Notice failed to meet the requirements of the Commission's Rule 25-4.118, Local, Local Toll, and Toll Provider Selection, Florida Administrative Code, and that Telephone One Inc. appears to be exposed to a potential slamming liability. Mr. Fernandez then asked what he could do to correct this matter and minimize his exposure. Mr. Fernandez claimed that he was only helping Mr. Nodarse as a favor, and that his telephone company is a "small time player". Mr. Fernandez stated that his primary income was from another source and he has no interest in making Telephone One Inc. his primary source of income.

Staff learned from Mr. Fernandez that Telephone One Inc. had switched approximately 100 customers from FLATEL, Inc. to itself and approximately 40 more customers were in the process of being switched. Staff suggested to Mr. Fernandez that he might consider refunding all customers that had not already been switched (this is a pre-paid service) and notify the others that they have a choice of any company they want for local phone service. Also, Mr. Fernandez stated that he would not take any more orders from Mr. Nodarse and would so inform him. Mr. Fernandez submitted his proposed plan (Attachment W) in writing to staff. Staff notes that the number of complaints filed by both Mr. Nodarse against FLATEL, Inc. and complaints filed by Mr. Matari against Utility USA, Inc. subsided.

On September 11, 2003, staff was contacted by Mr. Bernie Motola, who represents Mr. Nodarse and Utility USA, Inc. Mr. Motola requested a sample of a Letter of Authorization that his client could use as a guide to develop a Letter of Authorization. E-mail correspondence between staff and Mr. Motola are provided as Attachment X. Staff fulfilled Mr. Motola's request on September 11, 2003.

On September 16, 2003, Mr. Motola e-mailed staff a Letter of Authorization (e-mail and Letter of Authorization included in Attachment X) requesting staff's review of the document for compliance with the Commission's Rule 25-4.118, Florida Administrative Code. Staff noted that the company's name on the Letter of Authorization was Universal

Wireless, a certificated CLEC, that heretofore was not at issue in these matters. It was unclear to staff the relationship between Mr. Nodarse and Universal Wireless. However, staff notes that Mr. Motola's e-mail of September 16, 2003, shows onodarse@aol.com as a copy recipient of the e-mail. The e-mail address was later confirmed to be that of Mr. Oscar Nodarse. Based on information in the Commission's Master Commission Directory, Mr. Nodarse is not listed as an associate of Universal Beepers Express, Inc. d/b/a Universal Wireless. Thus staff contacted Mr. Moeen Khalil, the listed liaison of Universal Beepers Express, Inc. d/b/a Universal Wireless and asked if he were aware that legal counsel for Mr. Nodarse was seeking a sample Letter of Authorization and review of a draft Letter of Authorization that showed Universal Beepers Express, Inc. d/b/a Universal Wireless as the provider of local telephone service. Mr. Khalil stated that he was aware of Mr. Motola's request and that he had made arrangements with Mr. Nodarse, whereby Mr. Nodarse would serve as an agent for Universal Beepers Express, Inc. d/b/a Universal Wireless.

On November 6, 2003, the Office of the General Counsel received an amended application and a settlement offer (Attachment Y) from Lusky & Motola, P.A., counsel for Utility USA, Inc.

Part 4 - Further Findings

On November 21, 2003, staff received an e-mail (Attachment Z) from Mr. Abby Matari. Mr. Matari claims that a company, Ameriphone/Utility USA, Inc., is not a certified CLEC and is operating in Florida without Commission approval. Mr. Matari attributes the Ameriphone Letter of Authorization (Attachment Z, regarding Augusto Ramire) to Mr. Oscar Carvajal and Mr. Oscar Nodarse, officers of Utility USA, Inc. Because the e-mail was received after the close of business on Friday, November 21, 2003, staff did not undertake an investigation of this matter until Monday, November 24, 2003.

Staff was aware that Universal Beepers Express, Inc. d/b/a Universal Wireless had submitted a request to add several fictitious names (Universal Telephone, Ameri Phone, and Unitel) to its CLEC certificate. Staff is still processing this request as Universal Beepers Express, Inc. d/b/a Universal Wireless' registration with the Secretary of State, Division of Corporations had expired, requiring the company to file for reinstatement. Based on the information provided by Mr. Matari and the knowledge of Universal Beepers Express, Inc. d/b/a Universal Wireless' filing, staff contacted Mr. Nodarse's legal counsel, Mr. Bernardo Motola, on November 24, 2003. Staff requested that Mr. Motola inquire of his client if the Ameriphone Letter of Authorization was an instrument Mr. Nodarse was using to obtain Augusto Ramire's consent for Ameriphone to serve as Ramire's local exchange telecommunications provider.

The same day, Mr. Motola contacted staff and stated that the Ameriphone Letter of Authorization was being used to serve as proof that Augusto Ramire had selected Universal Beepers Express, Inc. d/b/a Universal Wireless as the local exchange service provider. Mr. Motola stated that Universal Beepers Express, Inc. d/b/a Universal Wireless was not yet providing service to Augusto Ramire, but was processing the request to activate service. Mr. Motola further stated that Universal Beepers Express, Inc. d/b/a Universal Wireless has used the Ameriphone Letters of Authorization as authority to serve other customers. Ameriphone is not certificated to provide telecommunications services in Florida.

Staff advised Mr. Motola that Ameriphone is not a Commission approved CLEC, and that Universal Beepers Express, Inc. d/b/a Universal Wireless should not be using the name Ameriphone on Letters of Authorization. Mr. Motola acknowledged staff's concerns and he also expressed concern that Mr. Nodarse, an agent for Universal Beepers Express, Inc. d/b/a Universal Wireless, was using an Ameriphone Letter of Authorization instead of documents belonging to Universal Beepers Express, Inc. d/b/a Universal Wireless. As previously stated in the Case Background, at Mr. Motola's request, staff reviewed Universal Beepers Express, Inc. d/b/a Universal Wireless' Letter of Authorization. Mr. Motola stated that he had advised his client to only use this Letter of Authorization.

The Commission received payment of \$592.50 from Mr. Oscar Nodarse. The payment represents the regulatory assessment fees, plus penalty and interest, owed the Commission by Telebeeper, Inc. d/b/a Oscatel Communications. The payment resolved outstanding regulatory assessment fees owed for the years 2000, 2001, and 2002.

Based on this new information and further management and technical review of the facts in this case, staff has reconsidered its earlier position to recommend acceptance to the Commission of Utility USA, Inc.'s offer to settle this docket. On November 25, 2003, staff requested that Item 20, Docket 030873-TX, be deferred from the December 2, 2003, Agenda Conference. Staff's request was approved by the Chairman and the parties were notified.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.285 and 364.337, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept Utility USA, Inc.'s offer to settle and grant Utility USA, Inc. a certificate to provide competitive local exchange telecommunications service within the State of Florida as provided by Section 364.337, Florida Statutes?

RECOMMENDATION: No. The Commission should not accept Utility USA, Inc.'s offer to settle and should not grant Utility USA, Inc. Florida Public Service Commission Certificate No. 8419 to provide competitive local exchange telecommunications service within the State of Florida as provided by Section 364.337, Florida Statutes. The company should be required to immediately cease and desist providing competitive local exchange telecommunications service in Florida. (T. Williams, R. Kennedy, Rojas)

STAFF ANALYSIS: On September 2, 2003, Utility USA, Inc. filed an application seeking Commission authority to serve as a competitive local exchange telecommunications company in Florida. Since that filing, staff has been negotiating a settlement with Utility USA, Inc. Staff was seeking a settlement to resolve Telebeeper, Inc. d/b/a Oscatel Communications', unpaid regulatory assessment fee issues in Docket No. 011278-TX. Mr. Nodarse is the owner of Telebeeper, Inc. d/b/a Oscatel Communications and is an

officer and owner of Utility USA, Inc. Also, staff was seeking assurance, in the way of commitment and monetary forfeiture from Mr. Nodarse, that he would operate in compliance with the Commission's rules and orders. On November 6, 2003, the Office of the General Counsel received an amended application and a settlement offer (Attachment Y) from Lusky & Motola, P.A., counsel for Utility USA, Inc. In reviewing the amended application, staff notes that the company will rely on the network operation of its underlying carrier(s) **for its technical** maintenance and that the applicant appears to have adequate financial capabilities. The application did not contain a price list.

Section 364.337, Florida Statutes, Competitive local exchange telecommunications companies; intrastate interexchange telecommunications services; certification, states in part:

(1)... The 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 in the geographic area proposed to be served. ...
[emphasis added]

Mr. Nodarse obtained legal counsel who worked with staff to develop a Letter of Authorization that appeared to fulfill the requirements of the Commission's rules, but it was for Universal Beepers Express, Inc. d/b/a Universal Wireless, not Utility USA, Inc. Utility USA, Inc.'s settlement offer acknowledges staff's concerns about the company operating without a certificate and the company's use of faulty Letters of Authorization. To alleviate staff's concerns, the settlement offer provides:

The LOA's were used for a very short period of less than two weeks and proved to be unsuccessful as no customers were actually switched. Currently, Mr. Nodarse has been using LOA's, pre-approved by Mr. Kennedy at the PSC for Universal Wireless.

Although staff believed that Mr. Nodarse's managerial skills were questionable and were the basis for legitimate concern, on November 20, 2003, staff filed a recommendation supporting approval of Utility USA, Inc.'s application to operate as a CLEC in Florida. Staff believed that Mr. Nodarse's forfeiture of \$5,000, plus payment of the penalties and regulatory assessment fees in Docket No. 011278-TX, would have had a significant impact on his future practices. Staff also committed to the Commission that it would closely monitor Mr. Nodarse's actions through

the complaint process and regulatory assessment fee audits, and bring enforcement action against Mr. Nodarse for Commission consideration, if appropriate.

On November 24, 2003, as described in Part 4 of the Case Background, staff was dismayed to learn, particularly after Mr. Nodarse's counsel worked with staff to develop a proper letter of authorization, that Mr. Nodarse was now using an Ameriphone Letter of Authorization. Ameriphone is not a certificated company and should not be held out to be a bonafide provider of local telephone service.

The Ameriphone Letter of Authorization, Attachment Z, displays an address of 3957 Jog Road, Greenacres, Florida 33467, which is the same address provided in Mr. Nodarse's application for Utility USA, Inc., Attachment Y. This location is Utility USA, Inc.'s place of business, not Universal Beepers Express, Inc. d/b/a Universal Wireless'.

On November 28, 2003, the Office of the General Counsel received a facsimile (Attachment AA) from Mr. Nodarse. Mr. Nodarse appears to be responding to information that was exchanged between counsel for Utility USA, Inc. and the Commission's Office of the General Counsel. The exchange of information between the attorneys is described in detail in the Case Background, wherein the Commission's counsel was advised by Utility USA, Inc.'s counsel that the AmeriPhone Letter of Authorization was used by Universal Beepers Express, Inc. d/b/a Universal Wireless as authority to serve a specific customer, plus others.

Staff also notes that Mr. Nodarse is not listed as an officer, director, or, as far as staff knows, liaison for Universal Beepers Express, Inc. d/b/a Universal Wireless. Staff believes that Mr. Nodarse has no authority or legal basis to present himself to staff as a representative of Universal Beepers Express, Inc. d/b/a Universal Wireless. Staff believes this is another example of Mr. Nodarse's management style, and this action, coupled with other examples of Mr. Nodarse's management activities presented in the Case Background, lends further credence to staff's recommendation.

Staff is not accusing Mr. Nodarse of potential rule or statute violations related to actions for which Universal Beepers Express, Inc. d/b/a Universal Wireless bears responsibility. However, staff is very concerned about the historical and current management behaviors exhibited by Mr. Nodarse and believes his questionable management practices are legitimate reasons for denying Utility USA, Inc. authority to operate as a CLEC in Florida under Section 364.337, Florida Statutes.

Under the circumstances of this proceeding, staff believes that Mr. Nodarse's actions represent those of someone completely lacking managerial skills, and someone who has a complete lack of regard for the Commission's authority to regulate competitive local exchange telecommunications services.

Also, staff notes that after his departure from FLATEL, Inc., Mr. Nodarse has made arrangements with Telephone One Inc. and Universal Beepers Express, Inc. d/b/a Universal Wireless to provide local service to customers that Mr. Nodarse appears to have marketed. Mr. Nodarse's actions have potentially exposed both of these companies to regulatory enforcement actions because they, as the providers, are ultimately responsible for proving they have legally obtained authorization from customers to provide their service. Possibly, Mr. Nodarse plans to move the customers to Utility USA, Inc. if and when he obtains the CLEC certification from the Commission.

Staff has previously acknowledged concern for Mr. Nodarse's questionable management skills and practices before filing its first recommendation on November 20, 2003. Based on these most recent events, staff believes it is in the public's best interest to recommend that the Commission deny Utility USA, Inc.'s offer to settle and that the Commission should not grant Utility USA, Inc. Florida Public Service Commission Certificate No. 8419 to provide competitive local exchange telecommunications service within the State of Florida. Staff also believes that the Commission should order the company to immediately cease and desist providing competitive local exchange telecommunications service in Florida.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of issuance of the Proposed Agency Action Order. The docket should then be closed upon issuance of a Consummating Order. (T. Williams, R. Kennedy, Rojas)

STAFF ANALYSIS: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of issuance of the Proposed Agency Action Order. The docket should then be closed upon issuance of a Consummating Order.