

State of Florida



Public Service Commission

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DATE: July 7, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayb)

FROM: Division of Competitive Markets & Enforcement (Isler, Kennedy) *PK*
Office of the General Counsel (McKay) *VSM*
Division of Regulatory Compliance & Consumer Assistance (Vandiver) *AVCT*

RE: Docket No. 050238-TX – Application for certificate to provide competitive local exchange telecommunications service by USA Telephone Inc. d/b/a Choice One Telecom.

AGENDA: 07/19/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050238.RCM.DOC

Case Background

On May 26, 2005, the Commission issued Proposed Agency Action (PAA) Order PSC-05-0587-PAA-TX accepting USA Telephone Inc. d/b/a Choice One Telecom's (Choice One) settlement offer in this docket. The purpose of Choice One's settlement offer was to resolve outstanding issues associated with prior dockets and to obtain Commission authority to continue operating as a Competitive Local Exchange Telecommunications Company (CLEC) in Florida.

To briefly summarize, Choice One's CLEC Certificate No. 5647 was cancelled by the Commission effective November 5, 2004, in Docket No. 040845-TX, In Re: Compliance

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investigation of USA Telephone Inc. d/b/a Choice One Telecom for apparent violation of Section 364.183(1), F.S., Access to Company Records, and Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies. In a related action, Docket No. 040920-TI, In Re: Compliance investigation of USA Telephone Inc. d/b/a Choice One Telecom for apparent violation of Section 364.336, Florida Statutes, Choice One's IXC tariff was cancelled and its name was removed from the register.

Prior to issuance of the Consummating Order in this docket, Choice One notified staff that it is unable to pay one of its financial obligations in accordance with the settlement terms accepted by the Commission in PAA Order PSC-05-0587-PAA-TX. Choice One has proposed and seeks Commission approval of an alternative arrangement for paying monies it owes Florida Telecommunications Relay, Inc. (FTRI). This recommendation addresses Choice One's request for approval of an alternative payment arrangement.

Choice One remains an active CLEC in Florida serving more than 3,000 customers. The company reported \$1,940,300.94 gross intrastate operating revenue for its CLEC operations in 2004.

The Commission has jurisdiction over these matters pursuant to Sections 364.04, 364.285, 364.336, 364.337, and 427.704.

Discussion of Issues

Issue 1: Should the Commission accept the alternative arrangement proposed by USA Telephone Inc. d/b/a Choice One Telecom to pay monies owed to Florida Telecommunications Relay, Inc., wherein \$3,384.30 will be paid immediately, and the balance owed of \$6,000.00, plus interest of \$114.12, for a total of \$6,114.12, will be paid in six equal installments of \$1,019.02 each, beginning September 1, 2005?

Recommendation: Yes. (Isler, R. Kennedy, McKay)

Staff Analysis: Prior to the deadline for protest, Choice One notified staff that it did not have sufficient funds to fulfill all of its settlement offer obligations approved by the Commission in Order PSC-05-0587-PAA-TX. Specifically, Choice One explained that it does not have the financial capability to immediately pay all the monies owed FTRI for the Telecommunications Relay Surcharges (TRSs). The key elements of Choice One's settlement offer, accepted by the Commission in Order PSC-05-0587-PAA-TX, are:

- Pay \$7,500 as settlement of the total assessed penalty of \$11,500 (in the prior dockets described in the Case Background).
- In the future, respond promptly and pay Regulatory Assessment Fees (RAFs) on a timely basis.
- Provide data described in Attachment A and upon analysis, pay all required fees to FTRI.

On May 11, 2005, the Commission received payment of \$7,500 from Choice One and the company is current on its RAF payments. Choice One has also provided staff the relevant data described in Attachment A. Based upon these data, staff has determined that Choice One owes FTRI \$9,384.30. Choice One stated that it has submitted a payment to FTRI in the amount of \$3,384.30, which staff has verified. Choice One still owes FTRI \$6,000 at the time of filing this recommendation. Choice One has offered to pay the \$6,000, plus interest of \$114.12, for a total of \$6,114.12, in six monthly installments of \$1,019.02 each, beginning September 1, 2005. Choice One acknowledges that failure to comply with the Commission's order resulting from this recommendation (assuming the Commission accepts the revised settlement offer), will result in revocation of its CLEC authority in Florida.

When the first recommendation was filed in this docket on April 21, 2005, the company was not able to determine how much money, if any, it owed FTRI. The company was operating without Commission authority and was under pressure from staff and wholesale suppliers to obtain Commission authority or be disconnected. Without knowing the amount of money owed, Choice One offered to pay in full any monies owed FTRI within 15 days after issuance of the Consummating Order.

To determine the amount of money it owed FTRI, Choice One claimed that it would have to research warehoused records back to 2002, or obtain records from BellSouth. The records were critical because on wholesale resale services, BellSouth collects the TRS from the CLEC

and remits payment to the FTRI. BellSouth does not collect the TRS from the CLEC on UNE products. Choice One began switching from wholesale resale services to UNE products in November 2002. Thus, Choice One had a mix of products, on some of which it owed the TRS payment and on others it did not.

Staff believes that Choice One was genuinely confused, albeit negligent, about the TRS requirement. Choice One claims it never billed its customers the TRS, and was quite surprised by the amount of money, \$9,384.30, it owed FTRI. Choice One also claims that payment of \$7,500 to the Commission on May 11, 2005, depleted its cash reserve, making it impossible to pay FTRI the full amount within 15 days of issuance of the Consummating Order.

To date, Choice One has cooperated with staff, has paid all outstanding regulatory assessment fees, has paid \$7,500 to the Commission as proposed in this docket, and has paid \$3,384.30 to the FTRI. Because the company is making an effort to resolve its regulatory issues, staff recommends that the Commission accept the alternative arrangement proposed by USA Telephone Inc. d/b/a Choice One Telecom to pay monies owed to Florida Telecommunications Relay, Inc., wherein \$3,384.30 will be paid immediately, and the balance owed of \$6,000.00, plus interest of \$114.12, for a total of \$6,114.12, will be paid in six equal installments of \$1,019.02 each, beginning September 1, 2005.

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Issue 2: If the Commission approves staff's recommendation in Issue 1, should the Commission make Certificate No. 8587 active, with an effective date of May 3, 2005?

Recommendation: Yes. (Isler, R. Kennedy, McKay)

Staff Analysis: The Commission voted to approve Choice One's settlement offer and conditionally approved granting Choice One a CLEC certificate on May 3, 2005. In Order PSC-05-0587-PAA-TX, the Commission granted Choice One Certificate No. 8587, but ordered that the certificate shall not become active until the company has fully complied with all the terms of the settlement. Choice One, by not paying FTRI in full, has not complied with the terms of its settlement. Thus, Certificate No. 8587 did not become active.

The protest period for Order PSC-05-0587-PAA-TX expired on June 16, 2005. There were no protests filed, other than a response from Choice One. Choice One notified staff that it lacked sufficient funds to pay all the monies owed FTRI and that it was seeking Commission approval for an alternative payment arrangement. Thus, a Consummating Order was not issued and Certificate No. 8587 was never made effective.

If the Commission accepts staff's recommendation in Issue 1, the final payment of the proposed settlement will not occur until February 1, 2006. Under these circumstances, staff believes it is practical to grant the certificate, effective the date of the Commission's original vote, in order for the company to properly conduct CLEC operations in Florida. If the Commission approves staff's recommendation in this issue and the company fails to fulfill the settlement, then the Commission can revoke the certificate as discussed in Issue 3. The company acknowledges its understanding that the Commission will revoke its authority to operate as a CLEC in Florida if it fails to fulfill the settlement.

Therefore, staff recommends that the Commission should make Certificate No. 8587 active, with an effective date of May 3, 2005.

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Issue 3: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's 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. If Choice One fails to make the monthly payments, direct and payable to FTRI, with written notification of each payment to the Commission, Certificate No. 8587 will be cancelled, staff will notify underlying carriers to discontinue providing the company wholesale local exchange services, and the company should be required to immediately cease and desist providing any telecommunications services in Florida. This docket should be closed administratively upon either verification that required fees have been paid to FTRI, or upon cancellation of Certificate No. 8587 and notification to underlying carriers to discontinue providing the company wholesale local exchange services. (McKay)

Staff Analysis: Staff recommends that the Commission take action as set forth in the Recommendation above.

Required Information
USA Telephone Inc. d/b/a CHOICE ONE Telecom

1. List of underlying carriers from which the company obtains wholesale local exchange services, e.g., BellSouth, Sprint, Verizon, etc., identified by year beginning January 1, 2002, to the current date.
2. List of the types of wholesale services acquired from each underlying carrier, e.g., resale, UNE-P, etc., and the date when wholesale services were switched from resale to UNE-P, if applicable for the period January 1, 2002, to the current date.
3. Statements (billing statements or correspondence from the underlying carrier) showing that each underlying carrier collected relay surcharge payments from the company and submitted payment to the Florida Telecommunications Relay, Inc. (FTRI) on behalf of the company. Billing statements or correspondence are required for the period January 1, 2002, to the current date.
4. List of dates when the underlying carrier(s) stopped collecting relay surcharges from the company.
5. Copies of checks paid to the FTRI beginning January 1, 2002, to the current date.
6. Copies of returns submitting surcharges to the FTRI beginning January 1, 2002, to the current date.
7. Billing data indicating the number of subscribers served by the company for each January 1 and July 1, 2002 through 2004.