

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Northeast Florida Telephone)
Company d/b/a NEFCOM against South-)
eastern Services, Inc. for failure to pay)
intrastate access charges pursuant to)
Northeast Florida's tariffs and for violation)
of Section 364.16(3)(a), Florida Statutes)

Docket No. 060083-TP

Filed: February 21, 2006

**SSI'S RESPONSE TO COMPLAINT
OF NORTHEAST FLORIDA TELEPHONE COMPANY
(IN EVENT SSI'S MOTION TO DISMISS IS NOT GRANTED)**

COMES NOW, Defendant, Southeastern Services, Inc. (hereinafter referred to as "SSI"), and subject to its plea to the jurisdiction and Motion to Dismiss and without waiver thereof, files this its Response to Complaint of Northeast Florida Telephone Company d/b/a NEFCOM (hereinafter "NEFCOM") in the event the Florida Public Service Commission ("the Commission") does not grant SSI's Motion to Dismiss, and states as follows:

1. SSI has filed a Motion to Dismiss based on several different theories. This Response to NEFCOM's Complaint is submitted subject to and without waiver of SSI's Motion to Dismiss.
2. With regard to the introductory paragraph, SSI admits that NEFCOM has filed a document it styles as a complaint, and that NEFCOM requests action by the Commission. SSI denies that NEFCOM's "Complaint" complies with Rule 28-106.201, Florida Administrative Code. SSI denies that NEFCOM is permitted to file a complaint pursuant to Rule 25-22.036, Florida Administrative Code, with regard to the controversy at hand. In its capacity as a Competitive Local Exchange Company ("CLEC") reselling NEFCOM's local services, SSI is not responsible for paying, collecting or remitting any access charges NEFCOM may be entitled

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to receive when one of its end users initiates a call or when SSI's resold service customer receives a call. In its capacity as an ESP providing enhanced and/or information services, SSI is an end user and is not subject to the Commission's jurisdiction, particularly when it comes to Voice over Internet Protocol ("VoIP") services. Even though SSI was not acting in its capacity as an Interexchange Carrier ("IXC") with regard to the controversy at hand, the Commission does not have jurisdiction over VoIP services provided by an IXC or any other entity. Finally, the services provided by SSI were jurisdictionally interstate and exempt from intrastate regulatory jurisdiction. Therefore, SSI – acting as a VoIP service provider – is not a "person subject to the Commission's jurisdiction" which is a required and jurisdictional prerequisite to a complaint filed under Rule 25-22.036, Florida Administrative Code.

3. SSI wholly denies each and every allegation contained in Paragraph 1.

4. SSI wholly denies each and every allegation contained in Paragraph 2.

5. For the reasons set forth in SSI's Motion to Dismiss and below, the Commission cannot and should not make the findings requested by NEFCOM. The Commission cannot and should not grant any of the relief requested by NEFCOM in Paragraphs 2(1) through 2(3). Instead, the complaint must be dismissed.

6. SSI denies that the Commission has jurisdiction. The authorities cited by NEFCOM do not create or confer jurisdiction over this dispute. Therefore, SSI wholly denies each and every allegation contained in Complainant's second Paragraph 1 regarding jurisdiction.

7. SSI does not take issue with the identification of Complainant in NEFCOM's second Paragraph 2.

8. SSI lacks sufficient knowledge as to the proper identity of Complainant's authorized representatives to admit or deny Paragraph 3.

9. SSI lacks sufficient knowledge as to NEFCOM's corporate organization and principal place of business to admit or deny Paragraph 4.

10. SSI lacks sufficient knowledge regarding the first two sentences of Paragraph 5, to admit or deny. With regard to the remainder, no response is necessary because the tariffs speak for themselves.

11. SSI lacks sufficient knowledge regarding the allegations in Paragraph 6 to admit or deny.

12. SSI admits to the allegations contained in the first sentence of Paragraph 7. With regard to the second sentence, SSI admits that it holds a CLEC Certificate and an IXC Certificate, and admits that it was acting as a CLEC when it ordered and obtained NEFCOM's PRI services for resale. SSI denies that SSI was operating as an IXC with regard to the claims and issues arising in this proceeding. With regard to the third sentence, SSI admits that it provided and resold local exchange service, but denies providing intrastate interexchange and interstate interexchange telecommunications service with regard to the traffic and claims and issues arising in this proceeding. Rather, SSI acted as an enhanced and/or information service provider for the traffic and claims and issues arising in this proceeding and was, therefore, an "end user" for purposes of the access charge rules and as such entitled to obtain local PRI service as the telecommunications service output used to provide SSI's enhanced/information service output.

13. With regard to the assertions in Paragraph 8, SSI admits that Exhibit B is a true and correct copy of the existing Resale Agreement. No response is necessary to NEFCOM's characterizations of the Resale Agreement, since the Resale Agreement speaks for itself. SSI notes that the Resale Agreement contains a Venue Selection Clause for any disputes arising from the parties' relationship. The Venue Selection Clause places venue in the state courts and NEFCOM has brought an action pursuant to that Clause in Baker County Circuit Court in Baker

County, Florida. Hence, NEFCOM is barred from bringing a second and duplicative action before the Commission related to the same facts, circumstances and arguments. Such duplicative actions are frivolous, time-consuming and costly to all parties involved and NEFCOM has brought this case solely for purposes of harassment and in an attempt to have two opportunities to adjudicate the same issues.

14. With regard to the assertions in Paragraph 9, SSI denies providing intrastate and interstate interexchange telecommunication services – as an IXC or otherwise – for the traffic at issue in this case. SSI admits that it has not paid access charges related to NEFCOM-originated traffic to SSI's ESP platform, but denies NEFCOM's access tariff applies or, if it does apply, that usage-sensitive Feature Group A charges are due to NEFCOM. SSI denies it expressly, impliedly or constructively ordered switched access Feature Group A service and denies that it received or used switched access Feature Group A service or facilities.

15. SSI admits the first sentence of Paragraph 10, but denies the second sentence. With regard to the third sentence, no response is necessary since the tariffs speak for themselves. SSI admits the fourth sentence.

16. SSI admits the first sentence in Paragraph 11, but lacks sufficient knowledge to admit or deny the assertions made in the second sentence. SSI denies it gave any cause for NEFCOM to believe the PRIs would be used for any specific purpose other than to support SSI's enhanced service activities or for administrative use.

17. SSI admits the allegations contained in Paragraph 12.

18. SSI lacks sufficient knowledge to admit or deny the allegations contained in the first sentence of Paragraph 13. No response is necessary with regard to the second sentence; any advertisements speak for themselves. Likewise, SSI lacks sufficient knowledge to admit or deny

the assertions in the third sentence. No response is necessary to the last sentence since the web site content referred to by NEFCOM (to the extent it exists or existed) speaks for itself.

19. SSI wholly denies each and every allegation set forth in Paragraph 14, as it is an inaccurate and incomplete description of the means by which NEFCOM's telecommunications service end user customers used their local exchange service to access SSI's enhanced services, including SSI's enhanced VoIP service. NEFCOM's description of SSI's enhanced service is also inaccurate and incomplete and SSI, therefore, denies the averments.

20. SSI wholly denies each and every allegation set forth in Paragraph 15. The Resale Agreement speaks for itself.

21. SSI denies the first three sentences in Paragraph 16. NEFCOM's tariffs speak for themselves. SSI admits that it received a letter dated September 12, 2002, but contends that said letter did not give sufficient notice, and denies that NEFCOM's interpretation of the letter is accurate. Likewise, SSI wholly denies the last sentence in Paragraph 16. SSI disputed that it owed the amounts claimed to be owed in the purported bill and NEFCOM was aware of the dispute.

22. With regard to the averments in Paragraph 17, SSI admits that it received the document dated October 1, 2002 and purporting to be a bill. That document speaks for itself. SSI, however, denies that it represents a proper interpretation of the tariff, denies that the tariff applies, and denies the bill is a proper calculation of charges that would be proper if the tariff does apply. SSI denies it expressly, impliedly or constructively ordered switched access Feature Group A service or facilities and denies that it received or used switched access Feature Group A service or facilities. SSI admits that it did not pay the amounts wrongly demanded. SSI admits that it received subsequent documents purporting to be bills. Those documents speak for

themselves. SSI denies that said documents were in accordance with the tariff, denies that they represent a proper interpretation of the tariff, denies that the tariff applies and denies that the amounts on the purported bills represent a correct calculation of charges that would be proper if the tariff does apply. SSI adds that it disputed that it owed the amounts claimed to be owed in the purported bills and NEFCOM was aware of the dispute.

23. SSI denies that the first sentence of Paragraph 18 is a completely accurate statement of “industry practice.” The tariff speaks for itself. SSI denies acting as an IXC for the traffic at issue, so the “practice” and the tariff do not apply. SSI admits that it did not provide call detail, but denies that it was under any obligation to do so. SSI did advise NEFCOM that the service was an enhanced and/or information service and was, therefore, jurisdictionally interstate, but subject to the ESP Exemption. Contrary to NEFCOM’s claim, SSI contends that it cooperated fully. SSI denies that either NEFCOM’s service or SSI’s services were provided over “FGA facilities.” SSI denies it expressly, impliedly or constructively ordered switched access Feature Group A service or facilities and denies that it received or used switched access Feature Group A service or facilities. SSI lacks sufficient knowledge concerning what NEFCOM could or could not do, or what it chose to assume, to admit or deny the claim relating to NEFCOM’s thought processes or mental impressions. SSI denies that “all traffic” should have been classified as 100% intrastate use for access charge purposes since access charges did not apply and SSI’s enhanced/information service is jurisdictionally interstate in any event.

24. SSI lacks sufficient knowledge to admit or deny the claims set forth in the first three sentences of Paragraph 19. The purported bills speak for themselves. The “sample monthly billing” NEFCOM provided also speaks for itself, but SSI denies that said documents were in accordance with the tariff, denies that they represent a proper interpretation of the tariff, denies

that the tariff applies and denies that the amounts on the purported bills represent a correct calculation of charges that would be proper if the switched access tariff does apply. SSI denies it expressly, impliedly or constructively ordered switched access Feature Group A service or facilities and denies that it received or used switched access Feature Group A service or facilities.

25. SSI lacks sufficient knowledge to admit or deny the allegations set forth in the first sentence of Paragraph 20. SSI denies the characterization in the second sentence. SSI moved from the PRI-based enhanced service to a different platform because NEFCOM threatened disconnection and was using its monopoly control over bottleneck local exchange facilities to harm a nascent competitor and was otherwise acting anticompetitively. There was no “obligation to pay originating access” and SSI has consistently maintained this is so. In addition, the 8YY number that is now used terminates in Chicago, Illinois, at which point the traffic is converted to Internet Protocol (“IP”) so that SSI can provide its ESP services, which further confirms that SSI’s enhanced service is jurisdictionally interstate. Finally, the 8YY service is not an “originating access service.” It is a non-geographic toll-free telecommunications service that is not either telephone exchange service or exchange access service. 8YY service providers do not provide originating access. Therefore, SSI did not pay Qwest for “originating access service.” SSI lacks sufficient knowledge to admit or deny that Qwest or any other 8YY provider ultimately paid NEFCOM originating access charges.

26. SSI admits that it has disputed NEFCOM’s purported bills and they have not been paid. SSI denies it expressly, impliedly or constructively ordered switched access Feature Group A service and denies that it received or used switched access Feature Group A service or facilities. SSI denies that originating access charges apply, denies that any amount is due and payable, and

denies that interest and late charges are due, appropriate or lawful. Further, SSI denies that it was required to order and purchase originating Feature Group A switched access service for any time period.

COUNT I

27. No response is necessary to Paragraph 22, except as has been set forth in the above paragraphs.

28. SSI lacks sufficient knowledge as to the allegations set forth in Paragraph 23 to admit or deny. No response is necessary regarding NEFCOM's tariffs as they speak for themselves. SSI denies it expressly, impliedly or constructively ordered switched access Feature Group A service and denies that it received or used switched access Feature Group A service or facilities. SSI denies that those tariffs apply or that access charges are due.

29. SSI wholly denies each and every allegation in Paragraph 24. The descriptions of the means by which NEFCOM's telecommunications service end user customers used their local exchange service to access SSI's enhanced services, including SSI's enhanced VoIP service are inaccurate and incomplete. NEFCOM's description of SSI's enhanced service is also inaccurate and incomplete. SSI avers that the services it provided to customers do meet the definition of "enhanced service" under 47 C.F.R. § 64.702(a) and do meet the definition of "information service" under 47 U.S.C. § 153(20). There is both a change in form and a change in content, and the conversion to IP from TDM provides the foundation for and is an essential prerequisite to the offering of enhanced functionalities.

30. No response is necessary to the allegations concerning and interpretations of the *AT&T Declaratory Ruling* in Paragraph 25. Said FCC Ruling speaks for itself.

31. No response is necessary to the allegations and interpretations of the *AT&T Declaratory Ruling* in Paragraph 26. Said FFC Ruling speaks for itself.

32. Regarding the claims in Paragraph 27, SSI denies that its service is “substantially similar” to the service addressed in the *AT&T Declaratory Order* or that the FCC order applies so as to require that SSI’s service be subject to access charges. Furthermore, SSI denies that it is subject to any NEFCOM switched access tariff, and denies that SSI has breached that tariff to the extent it applies. SSI denies that it expressly, impliedly or constructively subscribed to NEFCOM’s Feature Group A switched access service. SSI denies that it obtained or used NEFCOM’s Feature Group A switched access service. SSI denies that the service NEFCOM provided to SSI was Feature Group A switched access service in whole or in part. SSI denies that it owes NEFCOM any amount related to switched access charges or any late charges. Finally, SSI demands strict accounting of any amounts claimed to be owed and the information that supports it including all call detail.

COUNT II

33. No response is necessary to the allegations contained in Paragraph 28, except as has been set forth in the above paragraphs.

34. No response is necessary to the allegations set forth in Paragraph 29. The statute speaks for itself.

35. No response is necessary to the allegations presented in Paragraph 30. The statute speaks for itself.

36. No response is necessary to the allegations contained in Paragraph 31. The statute speaks for itself. SSI denies that the statute applies to this matter. No response is necessary relating to the Commission’s orders, since those orders speak for themselves. SSI further denies that it is or

was subject to Feature Group A switched access charges. SSI denies that it expressly, impliedly or constructively subscribed to NEFCOM's Feature Group A switched access service. SSI denies that it obtained or used NEFCOM's Feature Group A switched access service. SSI denies that the service NEFCOM provided to SSI was Feature Group A switched access service in whole or in part.

37. SSI wholly denies each and every allegation presented in Paragraph 32.

38. With regard to the averments in Paragraph 33, SSI denies that it has violated Section 364.16(3)(a), Florida Statutes, or that switched access Feature Group A charges apply. SSI denies that it expressly, impliedly or constructively subscribed to NEFCOM's Feature Group A switched access service. SSI denies that it obtained or used NEFCOM's Feature Group A switched access service. SSI denies that the service NEFCOM provided to SSI was Feature Group A switched access service in whole or in part. SSI lacks sufficient knowledge as to NEFCOM's estimate, and is therefore not able to admit or deny the allegations concerning the estimate. Therefore, SSI demands strict accounting of any amounts claimed to be owed and the information that supports it including all call detail.

39. SSI denies that Section 364.16(3)(a), Florida Statutes, applies or that SSI has violated that provision.

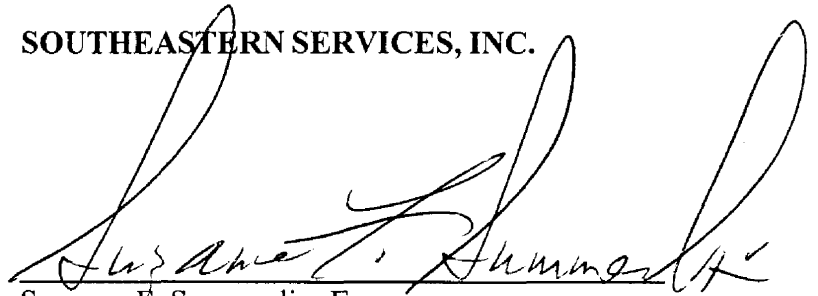
SSI's PRAYER FOR RELIEF

40. SSI denies that Commission has jurisdiction. To the extent there is jurisdiction, SSI agrees a hearing is required, but insists on its right guaranteed by Article I Section 22 of the Florida Constitution to a trial by jury.
41. SSI denies that SSI owes any amount.
42. SSI denies that Section 364.16(3)(a), Florida Statutes, applies or SSI has violated it.
43. SSI denies any amount of switched access is due, and denies that the amount claimed by NEFCOM is just, reasonable, verifiable, correct or proper. Further SSI denies that interest or late charges are due, just, reasonable, verifiable, correct or proper.
44. SSI denies that Section 364.16(3)(a), Florida Statutes, applies. SSI denies that penalties can be considered in this complaint case and affirmatively asserts that any Commission consideration of penalties can only be handled in a case brought by the Commission rather than a private complainant.
45. SSI denies that NEFCOM is entitled to any relief.

WHEREFORE, Southeastern Services, Inc. respectfully requests that NEFCOM's Complaint be dismissed. In the alternative, the case should be abated. In the further alternative, SSI requests that the Commission, after hearing, deny all relief requested by Complainant.

Respectfully submitted, this 2/17 day of February, 2006.

SOUTHEASTERN SERVICES, INC.



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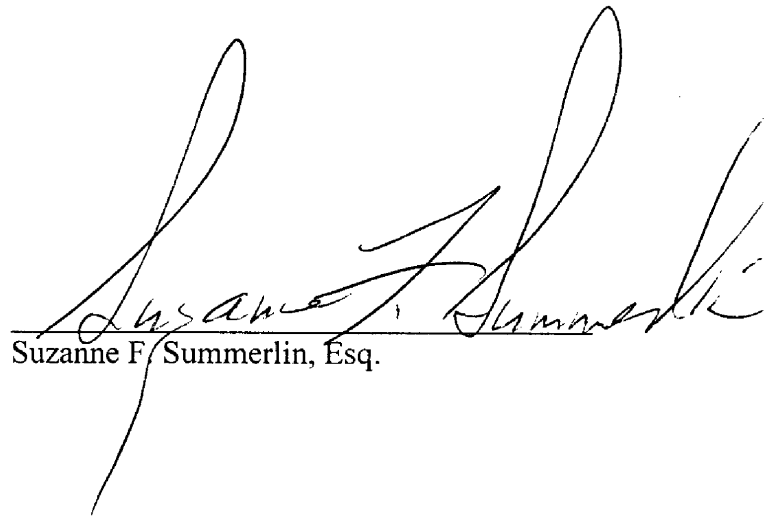
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Mail on this 21st day of February, 2006, upon the following:

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