

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: May 4, 2006

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

FROM: Division of Competitive Markets & Enforcement (McCoy, Cordiano)
Division of Economic Regulation (Lester) PL
Office of the General Counsel (McKay, Tan) PKW TDD VSM

ALM

RE: Docket No. 060033-TX – Application for certificate to provide competitive local exchange telecommunications service by Florida Phone Service, Inc. d/b/a Global Telecom Group.

AGENDA: 05/16/06 – 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\060033.RCM.DOC

Case Background

Florida Phone Service, Inc. d/b/a Global Telecom Group (FPS) first obtained a Certificate of Public Convenience and Necessity (Certificate No. 7237) to operate as a competitive local exchange telecommunications company (CLEC) in Florida on December 2, 1999.

In Docket No. 001492-TX, In Re: Cancellation by Florida Public Service Commission of Alternative Local Exchange Telecommunications Certificate No. 7237 issued to Florida Phone Service, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, FPS' CLEC certificate was cancelled April 9, 2001, for failure

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to pay the 1999 and 2000 Regulatory Assessment Fees (RAFs). Subsequently, FPS reapplied for and was granted CLEC authority (Certificate No. 7936) on March 22, 2002, in Docket No. 010951-TX.

In Docket No. 050622-TX, FPS' CLEC certificate was cancelled effective December 31, 2005, for failure to pay the 2004 Regulatory Assessment Fees (RAFs). That was the second time FPS' CLEC certificate was cancelled for failure to pay RAF.

Even though its certificate was cancelled, FPS continued to provide local exchange telecommunications services in Florida. To rectify this situation, FPS reapplied for a CLEC certificate on January 12, 2006. The company has now paid all outstanding RAFs and statutory late payment charges. In a parallel action of investigating a consumer complaint (Complaint No. 677379T), staff determined that FPS billed its customers for charges that were not in its price list, thus requiring a refund to affected customers.

To resolve these matters efficiently, staff requested that FPS submit a comprehensive plan. On February 13, 2006, staff received FPS' *Comprehensive Proposal for Consolidation and Resolution of Complaint No. 677379T and Recertification*. The following recommendations address FPS' settlement proposal to obtain the Commission's approval to operate as a CLEC in Florida, and FPS' proposal to refund customers.

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

Discussion of Issues

Issue 1: Should the Commission accept the settlement offer proposed by Florida Phone Service, Inc. d/b/a Global Telecom Group, and grant the company Certificate No. 8630 to operate as a competitive local exchange telecommunications company in Florida as provided by Section 364.337(1), Florida Statutes?

Recommendation: Yes. The Commission should accept the settlement offer proposed by Florida Phone Service, Inc. d/b/a Global Telecom Group and grant the company Certificate No. 8630 to operate as a competitive local exchange telecommunications company in Florida. **(McCoy, McKay, Tan)**

Staff Analysis: FPS continues to provide CLEC services in Florida after its authority was revoked by the Commission in Docket No. 050622-TX. Thus, FPS is providing telecommunications services without Commission authorization. At this time, FPS has paid all outstanding 2005 RAFs and statutory late payment charges.

FPS wants to continue providing CLEC services in Florida. FPS has submitted a CLEC application and price list. Because its CLEC authority has been cancelled twice by the Commission for non-payment of RAF, and it is currently operating without Commission approval, FPS proposes a settlement in its pursuit for CLEC authority.

Summary of Settlement Proposal

FPS' settlement proposal is as follows:

1. Pay the \$500 penalty assessed in Docket No. 050622-TX. The payment is to be made within 30 days of the issuance of the Consummating Order.
2. Contribute \$5,000 to the General Revenue Fund, to be paid in three equal monthly installments of \$1,666.66. The first payment is to be made within 30 days of the issuance of the Consummating Order; the second payment within 60 days of the issuance of the Consummating Order; and the final payment within 90 days of the issuance of the Consummating Order.
3. Appropriately identify services and charges in the price list submitted as part of the certification package (completed).
4. Engage an external telecommunications consulting group to provide future compliance and reporting services (completed). FPS believes this will ensure it reports timely on Commission matters such as RAF filings.
5. Issue refunds to customers that were billed for charges not identified or billed charges that were greater than those identified in FPS' price list. Staff presents the refund proposal as Issue 2 of this recommendation.

Section 364.337(1), Florida Statutes, provides that 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.

In developing its recommendation, staff considered such factors as management, financial, and technical capability of the applicant. Staff also considered historical information about the company and the impact of the abrupt loss of local telephone service by more than 4,000 customers.

Regarding the management capability, FPS' performance is poor as evidenced by the fact that its CLEC certificates were previously cancelled. When questioned about why FPS did not resolve the issues in Docket No. 050622-TX, the company stated that during the relevant time period, the day-to-day management of FPS was overseen by a General Manager who departed in early 2005 for a variety of personal and professional reasons, including ownership's dissatisfaction with the company's regulatory compliance record under his tenure. The company was involved in an internal reorganization and FPS briefly operated without a General Manager. Neither the Commission's regulatory requirements nor the Commission's delinquency notice were given proper attention. While undergoing internal changes, FPS had not yet fully implemented procedures to ensure adequate and timely compliance with regulatory matters and once again, failed to perform its regulatory obligations. The company has since engaged an outside telecom consulting group to ensure future regulatory compliance.

The company has offered competitive local exchange telecommunications services in Florida since December 2, 1999. In reviewing the data compiled in the Commission's Consumer Activity Tracking System, there have been several complaints filed by customers against FPS' CLEC operations, and though all were resolved, several were not processed timely. Complaint No. 677379T identified price list and tariff deficiencies which will result in a refund as described in Issue 2.

Regarding the company's financial capability, the company has paid all outstanding RAFs, plus statutory late payment charges, owed the Commission. In addition, the company paid a \$400 CLEC application fee in this docket and offers a cash settlement of \$5,500, which the company appears to have the financial resources to pay.

The company's technical capability generally relates to that provided by the underlying carriers. In FPS' case, underlying carrier services are provided by the major local exchange companies. Thus, staff believes that the company's technical capability is not at risk.

Based on the above, staff recommends that the Commission should accept the settlement offer proposed by Florida Phone Service, Inc. d/b/a Global Telecom Group and grant the company Certificate No. 8630 to operate as a competitive local exchange telecommunications company in Florida.

Issue 2: Should the Commission accept FPS' proposal to issue refunds of \$3,686.53, plus interest of \$182.38, for a total of \$3,868.91, to the affected customers within 30 days of the issuance of the Consummating Order, for overcharging end-users from January 2004 through February 2006; require the company to remit monies that it was unable to refund to the Commission for deposit in the State of Florida General Revenue Fund within 90 days of the issuance of the Consummating Order; and require the company to provide the Commission with a written confirmation, within 90 days of the issuance of the Consummating Order, stating: (1) the total amount of money refunded by check; (2) the total amount of money credited to customer accounts; and (3) the total amount of money that FPS was unable to refund.

Recommendation: Yes, the Commission should accept FPS' proposal to issue refunds to affected customers. **(Cordiano/Lester/McKay/Tan)**

Staff Analysis: Staff performed an investigation in customer Complaint No. 677379T and determined that FPS improperly billed the complainant and other customers. FPS reports that it raised its rates by \$4.99 without first filing a revision to its price list and that a billing system error caused two charges, an inside wire maintenance and paper billing surcharge, to be mistakenly assigned to the FCC authorized charge for network access. Rule 25-24.825(3), Florida Administrative Code, states that:

(3) A price list revision must be physically received by the Commission's Division of Competitive Markets and Enforcement at least one day prior to its effective date.

FPS has submitted a corrected price list as part of its application for CLEC authority, corrected the billing system error, and submitted a refund proposal as follows:

- issue refunds of \$3,686.53, plus interest of \$182.38, for a total of \$3,868.91, to the affected customers within 30 days of the issuance of the Consummating Order, for overcharging end-users from January 2004 through February 2006;
- remit monies that it was unable to refund to the Commission for deposit in the State of Florida General Revenue Fund within 90 days of the issuance of the Consummating Order;
- provide the Commission with a written confirmation, within 90 days of the issuance of the Consummating Order, stating:
 - (1) the total amount of money refunded by check;
 - (2) the total amount of money refunded to customer accounts;
 - (3) the date on which refunds were issued; and
 - (4) the total amount of money that FPS was unable to refund.

Staff believes that the corrective actions proposed by FPS will properly resolve all of the complainant's issues and other similarly-affected customers. Accordingly, staff recommends that the Commission accept FPS' refund proposal to issue refunds of \$3,686.53, plus interest of \$182.38, for a total of \$3,868.91, to the affected customers within 30 days of the issuance of the Consummating Order, for overcharging end-users from January 2004 through February 2006, require the company to remit monies that it was unable to refund to the Commission for deposit in the State of Florida General Revenue Fund within 90 days of the issuance of the Consummating Order; and require the company to provide the Commission with a written confirmation, within 90 days of the issuance of the Consummating Order, stating: (1) the total amount of money refunded by check; (2) the total amount of money credited to customer accounts; and (3) the total amount of money that FPS was unable to refund.

Issue 3: Should this docket be closed?

Recommendation: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order. The company should submit its final refund report, identified by docket number, and a check for the nonrefundable amount (if any), made payable to the Florida Public Service Commission within 90 days of the issuance of the Consummating Order. Unrefundable amounts (if any) should be submitted to the Florida Department of Financial Services for deposit in the General Revenue Fund. Payment of the \$500 penalty assessed in Docket No. 050622-TX should be made within 30 days of the issuance of the Consummating Order. The cost of RAF collection will be subtracted from the \$500 payment and will be deposited in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.1 13, Florida Statutes. Any monetary amount of the \$500 payment exceeding the cost of collection will be remitted to the Florida Department of Financial Services for deposit in the General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. The \$5,000 contribution to the General Revenue Fund, should be paid in three equal monthly installments of \$1,666.66. The first payment is to be made within 30 days of the issuance of the Consummating Order; the second payment within 60 days of the issuance of the Consummating Order; and the final payment within 90 days of the issuance of the Consummating Order. If the company fails to make the refunds, submit its final report, submit unrefundable amounts (if any), the \$5,000 contribution, and the \$500 payment, Certificate No. 8630 should 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 the refunds have been made, the \$5,000 contribution and \$500 payment have been submitted, unrefundable monies have been submitted to the Commission, or upon cancellation of Certificate No. 8630 and notification to underlying carriers to discontinue providing wholesale local exchange services. **(McKay, Tan)**

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