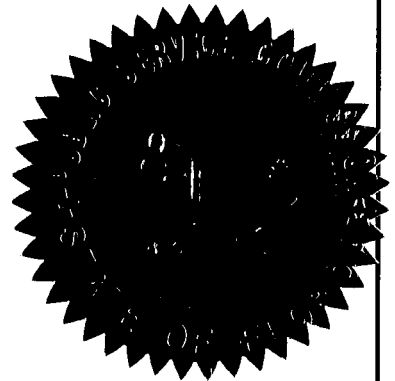


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080162-TI

In the Matter of:

ACKNOWLEDGMENT OF REGISTRATION AS  
INTRASTATE INTEREXCHANGE TELECOMMUNICATIONS  
COMPANY, EFFECTIVE MARCH 18, 2008, BY NCOM  
NETWORKS, LLC.



PROCEEDINGS:                   AGENDA CONFERENCE  
ITEM NO. 4

BEFORE:                         CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE:                            Tuesday, April 22, 2008

PLACE:                          Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY:                   LINDA BOLES, RPR, CRR  
Official FPSC Reporter  
(850) 413-6734

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1 PARTICIPATING:

2                   KEN JACOBY, representing NCOM Networks, LLC,  
3 appearing via telephone.

4                   CHARLENE POBLETE, ESQUIRE, and KIWANIS CURRY,  
5 representing the Florida Public Service Commission Staff.

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CHAIRMAN CARTER: Commissioners, we are now on Item 4. Let's give staff a moment to get organized here. So let's kind of turn and we'll have staff to introduce Item 4. Staff, you're recognized.

MS. CURRY: Kiwanis Curry on behalf of Commission staff.

Item Number 4 is staff's recommendation that the Commission accept NCOM Network's proposed settlement offer to make a voluntary contribution in the amount of \$7,500 to resolve the company's apparent violation of Rule 25-24.470. A representative for the company is available by phone, and staff is available for questions.

CHAIRMAN CARTER: By the way, Commissioners, a slight oversight. I do believe we have someone appearing by phone. Is that -- Mr. Jacoby, are you there, sir?

MR. JACOBY: Yes, sir, I am here.

CHAIRMAN CARTER: Okay. All right then.

MR. JACOBY: Can you hear me okay?

CHAIRMAN CARTER: Can you hear us?

MR. JACOBY: I can hear you fine. Can you hear me?

CHAIRMAN CARTER: We can, we can make it out.

MR. JACOBY: Okay. Thank you.

CHAIRMAN CARTER: Your phone must have been made in China. Just kidding. Just kidding. No.

1           Commissioners, you're recognized for questions.

2           MR. JACOBY: Actually that's Beijing, China, by the  
3 way (inaudible.)

4           COMMISSIONER ARGENZIANO: It sounds like --

5           CHAIRMAN CARTER: Okay. You sound like you're in  
6 Beijing.

7           MR. JACOBY: Well, actually I'm kind of driving and  
8 kind of stuck in traffic, so.

9           CHAIRMAN CARTER: You probably should pull over. It  
10 would be a good idea if you probably pulled over someplace and  
11 parked.

12           Commissioners, we're now -- you're recognized for any  
13 questions for staff or any of the parties. Commissioner Skop,  
14 you're recognized, sir.

15           COMMISSIONER SKOP: Thank you, Mr. Chairman. I guess  
16 in reviewing staff recommendation I do not support the staff  
17 recommendation in terms of the settlement, proposed settlement  
18 for \$7,500 with the associated payment plan. I am open to  
19 discuss proposed settlement resulting from this. But, again,  
20 the -- I find that having taken a default, what is equivalent  
21 to a default settlement in the amount of \$25,000, that the  
22 settlement in the amount of \$700, I mean, \$7,500 is patently  
23 insufficient, and coupling that with the payment plan, that  
24 just does not make good sense to me. But I'm open for  
25 discussion. You know, I think a more appropriate penalty would

1 be basically half the amount for \$12,500 payable at, in one  
2 lump sum. And I stand ready to --

3 MR. JACOBY: Well --

4 COMMISSIONER SKOP: Hold on, sir.

5 MR. JACOBY: Sorry. Sorry.

6 COMMISSIONER SKOP: This is between the Commissioners  
7 at the present point. Like I say, I can justify that if we  
8 need to get into detail with a lot of backup data, but that's  
9 my position.

10 CHAIRMAN CARTER: Commissioners, would you like to  
11 hear from Mr. Jacoby before we go further with questions on the  
12 issue that Commissioner Skop has raised?

13 COMMISSIONER ARGENZIANO: Yes, please.

14 CHAIRMAN CARTER: Mr. Jacoby, you're recognized, sir.

15 MR. JACOBY: Thank you. Sorry for the -- would you  
16 accept a proposal of \$12,500 in two payments?

17 CHAIRMAN CARTER: I'm sorry. We're having trouble  
18 understanding you. Could you say that again, please, sir?

19 MR. JACOBY: Would you accept the proposal of \$12,500  
20 in two payments?

21 CHAIRMAN CARTER: Commissioner Skop, you're  
22 recognized.

23 COMMISSIONER SKOP: Thank you, Mr. Chairman.

24 Actually I would probably not be inclined to do so.  
25 I'd certainly consider the view of my colleagues.

1           But essentially let me, let me dive into this a  
2 little bit more because it may be more effective. Essentially  
3 what happened here in the instant case is that staff received a  
4 consumer complaint and associated with that complaint, unlike  
5 the case cited as precedent which can be readily distinguished  
6 from the instant case, basically what was analogous to a  
7 default order or judgment was, was entered because our order  
8 was not protested. So basically what's on the books now is a  
9 penalty for the amount of \$25,000 owed by the company.

10           The company basically entered into, you know, a  
11 settlement proposal with staff to which staff accepted -- or in  
12 principle in terms of the staff recommendation that's before us  
13 today.

14           The problem I have with that is couple-fold. First  
15 and foremost, the staff proposed settlement amount is about  
16 one-third of what the current judgment against the company is.  
17 On top of that, with payment plans it, it gets -- you know,  
18 it's very generous to begin with. With payment plans it gets  
19 even more generous.

20           Some of the problem associated with that is, again,  
21 the instant case is readily distinguishable from the case that  
22 staff cited. And, furthermore, on top of that based on some  
23 financial data that staff has provided, and I think everyone  
24 has a copy of that, it seems to me that if the financials are  
25 accurate, they certainly have sufficient resources to make

1 payment in full. But moreover what really does this for me is  
2 that not only did they not register with the Commission, they  
3 did not properly register with the state. So essentially they  
4 were transacting business in the state in a manner not  
5 consistent with Florida Statute. They, at the time the cause  
6 of action occurred with the consumer complaint they were not  
7 properly registered with the state to do business as a limited  
8 liability company. They had previously been registered in  
9 Delaware as of 2004. So they were sophisticated enough to know  
10 to register in Delaware; however, they did not register as a  
11 foreign limited liability company in Florida until March 13th  
12 of 2008.

13           And pursuant to Florida Statute 608.51 or 501(1), "A  
14 foreign limited liability company may not transact business in  
15 this state until it obtains a certificate of authority from the  
16 Department of State." So that was done after the fact. So  
17 they were essentially conducting business illegally contrary to  
18 statute.

19           Now the consequences of transacting business without  
20 authority under Florida Statute 608.502(4), "A foreign limited  
21 liability company which transacts business in the state without  
22 authority to do so shall be liable to the state for the years  
23 or parts thereof during which it transacted business in the  
24 state without authority in an amount equal to all fees,  
25 penalties and taxes which would have been imposed by this

1 chapter upon such limited liability company had it duly applied  
2 for and received authority to transact business in the state as  
3 required by this chapter. In addition to the payments thus  
4 prescribed, such limited liability company shall be liable for  
5 a civil penalty of not less than \$500 or more than \$1,000 for  
6 each year or part thereof during which it transacts business in  
7 the state without a certificate of authority, and the  
8 Department of State may collect all penalties due under this  
9 subsection."

10           Again, to me it's a compounded problem and, again,  
11 they, unlike the case that staff cited which is not controlling  
12 upon this Commission, and, like I say, it can be readily  
13 distinguished from the facts of the instant case to the extent  
14 that in that case the company or entity involved in the  
15 settlement proposal actually submitted a settlement proposal  
16 prior to the end of the protest period. So that was not really  
17 brought, brought out or fleshed out within the staff  
18 recommendation. It was just basically used as a basis for why  
19 we should accept the settlement. And like I say, the facts are  
20 readily distinguishable.

21           But, again, my emphasis is not to penalize but to  
22 uphold the statutory laws of the State of Florida. We have our  
23 own jurisdiction, there's concurrent jurisdiction. But the  
24 bottom line is that Florida's corporation, corporate statutes  
25 or business organization statutes in part, notwithstanding the



1 PSC's jurisdictions, are designed to protect the consumer. And  
2 to me -- you know, and that's what we need to look out for  
3 because -- again, I have some, some other, other rationale  
4 provided. But like I say, I'll respect the will of the  
5 Commission. But I'm pretty firm on, you know, I think that if  
6 you have a judgment against you for \$25,000 and you're offering  
7 to settle for half that amount -- I think that's pretty  
8 generous to begin with. So that's where I am on the issue.

9 CHAIRMAN CARTER: One moment. One moment, Mr.  
10 Jacoby. Hang on a second.

11 Commissioner Argenziano, you're recognized.

12 COMMISSIONER ARGENZIANO: Well, in listening to  
13 Commissioner Skop, I certainly understand what he's saying.  
14 I'd like to ask Mr. -- is it Jacoby?

15 CHAIRMAN CARTER: Jacoby.

16 COMMISSIONER ARGENZIANO: I think he just offered up  
17 more money as a penalty for not following the laws of the State  
18 of Florida. And I just need to ask him why he needs to do that  
19 in two payments if -- what his, his response would be to that.

20 CHAIRMAN CARTER: Mr. Jacoby, did you hear the  
21 question?

22 MR. JACOBY: It was a little choppy but I kind of got  
23 the drift. I assume that as managing, managing (phonetic)  
24 member in May where I corrected most of the outstanding  
25 problems -- I am willing to accept the \$12,500 in one payment.

1 CHAIRMAN CARTER: Thank you.

2 MR. JACOBY: I --

3 CHAIRMAN CARTER: Hang on one second, Mr. Jacoby.

4 Hang on one second. Okay. Could you hang on for a second?

5 Commissioner Argenziano.

6 MR. JACOBY: I'm contrite.

7 COMMISSIONER ARGENZIANO: Mr. Jacoby, hang on a

8 second.

9 CHAIRMAN CARTER: One second, Mr. Jacoby. One

10 second.

11 Commissioner Argenziano.

12 COMMISSIONER ARGENZIANO: Well, I agree with what

13 Commissioner Skop said. I think that if we get, in my opinion,

14 if the other fellow Commissioners think 12, is it \$12,500 --

15 CHAIRMAN CARTER: \$12,500.

16 COMMISSIONER ARGENZIANO: -- in one payment, I think

17 that would help the concerns or aid in the concerns that

18 Commissioner Skop had, which are valid concerns, and would hope

19 that Mr. Jacoby just follows the laws of the state from then

20 on.

21 CHAIRMAN CARTER: Thank you, Commissioner.

22 MR. JACOBY: We will, sir. We will, sir.

23 COMMISSIONER ARGENZIANO: I know I have a deep voice,

24 but --

25 MR. JACOBY: \$12,500 in one payment.

1           CHAIRMAN CARTER: Thank you, Commissioners. I think  
2 that, I think, Commissioner Skop, a lot of what you said staff  
3 had pretty much -- and I think staff had done a good job in  
4 reviewing this case and I think that the issue centered upon  
5 the amount, as Commissioner Argenziano has kind of centered on  
6 here, and Mr. Jacoby has offered to pay \$12,500 in one payment.  
7 Is that right, Mr. Jacoby? Is that what you said?

8           MR. JACOBY: Yes, sir. That's exactly what I said.

9           CHAIRMAN CARTER: And I think that with that,  
10 Commissioners, that would, would put us in the posture --

11           MR. JACOBY: For the company I humbly apologize for  
12 any inconvenience we might have --

13           CHAIRMAN CARTER: Let me just say, Commissioners, are  
14 there any debate or discussion before we go further, because I  
15 don't, I don't want to cut off -- if any Commissioner wants to  
16 be heard, I want to be able to do that.

17           COMMISSIONER ARGENZIANO: Mr. Chairman, I just  
18 appreciate the apology because it was --

19           CHAIRMAN CARTER: Thank you so much for your apology,  
20 Mr. Jacoby, and your offer to resolve this matter. It's --  
21 your apology is accepted. And in a minute, Commissioners,  
22 after discussion I'll be asking for a motion.

23           Commissioner Skop, you're recognized.

24           COMMISSIONER SKOP: Thank you, Mr. Chairman. And,  
25 again, I'd like to thank Mr. Jacoby for calling in and offering

1 to resolve this matter in an amicable manner before us today.  
2 And with that, I'd like to move staff recommendation subject to  
3 the revision that the proposed settlement payment shall be in  
4 the amount of \$12,500 payable in one payment.

5 COMMISSIONER ARGENZIANO: Second.

6 CHAIRMAN CARTER: Moved and properly seconded.

7 Commissioners, any further questions?

8 All those in favor, let it be known by the sign of  
9 aye.

10 (Unanimous affirmative vote.)

11 All those opposed, like sign.

12 Thank you, Commissioners. Thank you, Mr. Jacoby.

13 (Agenda Item 4 concluded.)

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STATE OF FLORIDA        )  
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COUNTY OF LEON        )

CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 28<sup>th</sup> day of April, 2008.

Linda Boles  
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FPSC Official Commission Reporter  
(850) 413-6734