

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide competitive local exchange telecommunications service by Florida Phone Service, Inc. d/b/a Global Telecom Group.

DOCKET NO. 060033-TX
ORDER NO. PSC-06-0482-PAA-TX
ISSUED: June 5, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING CERTIFICATE TO PROVIDE COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

BY THE COMMISSION:

I. 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 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), our staff determined that FPS billed its customers for charges that were not in its price list, thus requiring a refund to affected customers.

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To resolve these matters efficiently, our staff requested that FPS submit a comprehensive plan. On February 13, 2006, our staff received FPS' *Comprehensive Proposal for Consolidation and Resolution of Complaint No. 677379T and Recertification*.

We have jurisdiction over these matters pursuant to Sections 364.04, 364.285, 364.336, and 364.337, Florida Statutes.

II. Analysis:

A. Accepting Settlement Offer and Granting of Certificate No. 8630

FPS continues to provide CLEC services in Florida after its authority was revoked by this Commission in Docket No. 050622-TX. Thus, FPS is providing telecommunications services without this 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 this Commission for non-payment of RAF, and it is currently operating without this 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 this 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.
6. Section 364.337(1), Florida Statutes, provides that this 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.

Our staff considered such factors as management, financial, and technical capability of the applicant. We 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 this Commission's regulatory requirements nor this 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 this 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 this 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, our staff believes that the company's technical capability is not at risk.

B. Accepting proposal to issue refunds

Our 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 this 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 this Commission for deposit in the State of Florida General Revenue Fund within 90 days of the issuance of the Consummating Order;
- provide this 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.

Our staff believes that the corrective actions proposed by FPS will properly resolve all of the complainant's issues and other similarly-affected customers.

III. Decision:

Based on the above, we find it appropriate to 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.

If this Order becomes final and effective, it shall serve as FPS's certificate. FPS shall, therefore, retain this Order as proof of certification.

CLEC providers are subject to Chapter 25-24, Florida Administrative Code, Part XV, Rules Governing Telecommunications Service Provided by Competitive Local Exchange Companies. CLEC providers are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapter 25-4, Florida Administrative Code.

Pursuant to Section 364.337(2), Florida Statutes, basic telecommunications service provided by a CLEC "... must include access to operator services, "911" services, and relay

services for the hearing impaired.” Further, Section 364.337(2), requires that a CLEC’s “911” service “... shall be provided at a level equivalent to that provided by the local exchange telecommunications company serving the same area.”

In addition, under Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee (RAFs) of \$50 if the certificate was active during any portion of the calendar year. A RAFs Return notice **will be** mailed each December to FPS for payment by January 30th. Neither the cancellation of the certificate nor the failure to receive a RAFs Return notice shall relieve FPS from its obligation to pay RAFs.

We find it appropriate to 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 this 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 this 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.

Therefore, 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 shall 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) shall 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 shall 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 shall 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 shall be cancelled. Our staff will notify underlying carriers to discontinue providing the company wholesale local exchange services, and the company shall be required to immediately cease and desist providing any telecommunications services in Florida. This docket shall 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 this Commission, or upon cancellation of Certificate No. 8630 and notification to underlying carriers to discontinue providing wholesale local exchange services.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we hereby grant Certificate No. 8630 to Florida Phone Service, Inc. d/b/a Global Telecom Group, which shall authorize it to provide Competitive Local Exchange Telecommunications services, subject to the terms and conditions set forth in the body of this Order. It is further

ORDERED that this Order shall serve as Florida Phone Service, Inc. d/b/a Global Telecom Group's certificate and shall be retained by Florida Phone Service, Inc. d/b/a Global Telecom Group as proof of certification. It is further

ORDERED that Florida Phone Service, Inc. d/b/a Global Telecom Group shall be governed by the terms and conditions concerning the refund process and settlement offer payment as specified in the body of this order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall 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 this Commission, or upon cancellation of Certificate No. 8630 and notification to underlying carriers to discontinue providing wholesale local exchange services.

By ORDER of the Florida Public Service Commission this 5th day of June, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 26, 2006.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.