

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of North
County Communications Corporation for
apparent failure to accurately disclose
information on application.

DOCKET NO. 110100-TX
ORDER NO. PSC-12-0025-PAA-TX
ISSUED: January 13, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On August 31, 2010, North County Communications Corporation (North County) submitted an application to obtain authority to provide competitive local exchange telecommunications services in Florida. By Proposed Agency Action (PAA) Order No. PSC-10-0598-PAA-TX, issued September 30, 2010, North County was granted competitive local exchange company (CLEC) Certificate No. 8799. The Order became final and effective on October 26, 2010, upon the issuance of Consummating Order No. PSC-10-0639-CO-TX.

After the company's certificate was granted, it was determined that North County had failed to disclose information on its CLEC application. Specifically, North County did not include information regarding the states in which the company had been involved in civil court proceedings with an interexchange carrier, local exchange company, or other telecommunications entity, and the circumstances involved as required by Part 16 question F of the CLEC application. As evidence of its managerial capabilities, North County submitted a resume for a deceased employee with its CLEC application.

DOCUMENT NUMBER-DATE

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Additionally, regulatory actions were taken against North County in two prior dockets for failure to pay its regulatory assessment fees (RAF).¹ Based on the company's failure to disclose information on its CLEC application and its two prior regulatory infractions, by PAA Order No. PSC-11-0405-PAA-TX, issued September 23, 2011, North County was advised that its CLEC Certificate No. 8799 would be cancelled for its failure to meet the managerial capability requirement of Section 364.335, Florida Statutes (F.S.). On October 10, 2011, North County protested the PAA Order and offered a proposed settlement to resolve the matter.

We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.33, and 364.335, F.S.²

Discussion

Section 364.335(2), F.S., provides in part that a certificate of authority to provide telecommunications services shall be granted 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. Rule 25-24.810, F.A.C., *Application for a Certificate*, requires that an applicant for a certificate shall submit a completed Form PSC/RAD 8 (5/08) entitled "*Application Form for Authority to Provide Competitive Local Exchange Service Within the State of Florida*," and the form is incorporated into the rule by reference.

As stated above, North County failed to disclose information on its CLEC application. The company resubmitted a complete CLEC application, along with the required resumes and financial statements. However, the company's failure to disclose information on its CLEC application and its two prior regulatory infractions demonstrate that North County lacks the managerial capability required by Section 364.335(2), F.S., to operate as a CLEC in Florida.

Therefore, in PAA Order No. PSC-11-0405-PAA-TX, issued September 23, 2011, North County was advised that its CLEC Certificate will be cancelled. After the PAA Order was issued, North County submitted a settlement agreement wherein the company offered to submit a one-time voluntary payment of \$2,500 to resolve the matter. The settlement agreement is attached hereto and incorporated herein. In addition to the settlement agreement, North County has retained an experienced regulatory counsel who will be responsible for ensuring that the

¹ See Docket No. 020628-TX, In Re: Cancellation by the Florida Public Service Commission of ALEC Certificate No. 7764 issued to North County Communications Corporation for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies (established to address North County's failure to pay its 2001 RAF payment). See also Docket No. 100220-TX, In Re: Compliance investigation of CLEC Certificate No. 7764, issued to North County Communications Corporation, for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies (established to address North County's failure to pay its 2009 RAF payment). We ultimately cancelled North County's initial CLEC Certificate No. 7764 for failure to pay its RAF. However, the company reapplied for a certificate and was granted its current CLEC Certificate No. 8799).

² Section 364.337, F.S., was repealed effective July 1, 2011, after North County's CLEC certificate was issued. Pursuant to Section 364.33, F.S., effective July 1, 2011, we no longer issue certificates of necessity to provide CLEC services. However, existing certificates remain valid.

company maintains future compliance, an act that demonstrates compliance with the managerial requirements of Section 364.335(2), F.S.

North County also stated that it had not placed the same importance on ensuring compliance in Florida (a state in which the company is non-operational) as it has on ensuring compliance in other states in which the company is operational. It is North County's position that hiring an experienced regulatory counsel to handle the company's regulatory matters affirms the company's commitment to maintain future compliance. North County was also notified that even if it made the one-time voluntary payment of \$2,500 as outlined in its settlement agreement and its CLEC certificate No. 8799 is not revoked, future noncompliance with or willful violation of any statute, rule, or order will subject North County to possible penalties pursuant to Section 364.285, F.S., and/or cancellation of its CLEC Certificate. If penalties are assessed in the future for noncompliance, North County was also informed that its prior regulatory violations would be considered when determining the penalty to impose.

We therefore find that North County's attempts to resolve its regulatory violations satisfactory and that North County's settlement agreement is consistent with our prior settlement agreements for similar violations.³ Furthermore, we acknowledge North County's explanation that its failure to disclose information on its CLEC application may have resulted from a scrivener's error rather than from an intentional or willful violation of our rules or orders. Therefore, we find it appropriate to approve North County's settlement agreement to submit a one-time voluntary payment of \$2,500.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement agreement submitted by North County Communications Corporation, attached hereto and incorporated herein as Attachment A, is approved. It is further

ORDERED that within fourteen days of this order becoming final and non-appealable, North County Communications Corporation shall make a voluntary one-time payment of \$2,500, payable to the Florida Public Service Commission and identifying the docket number and the company's name. The payment shall be forwarded to the Division of Financial Services to be deposited into the General Revenue Fund. It is further

ORDERED that if North County fails to pay the \$2,500 within fourteen (14) calendar days after the issuance of the Consummating Order, its CLEC Certificate No. 8799 shall be revoked. It is further

³ See Order No. PSC-05-0734-PAA-TP, issued on July 8, 2005, in Docket No. 050363-TP, In Re: Compliance investigation of Southeastern Services, Inc. for apparent failure to disclose required information on each of its applications for alternative access vendor certificate, competitive local exchange company certificate, and interexchange company certificate (wherein Southeastern Services, Inc., inadvertently failed to disclose pertinent information on its applications. To resolve the matter Southeastern Services, Inc.'s settlement agreement to voluntarily contribute a payment of \$2,500 was approved).

ORDERED that this docket shall be closed administratively upon receipt of the \$2,500 or revocation of North County's CLEC certificate.

By ORDER of the Florida Public Service Commission this 13th day of January, 2012.



HONGWANG
Chief Deputy Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 3, 2012.

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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.

ATTACHMENT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of North) DOCKET NO. 110100-TX
County Communications Corporation for) ORDER NO. PSC-11-0405-PAA-TX
apparent failure to accurately disclose) ISSUED: September 23,2011
information on application.)

**PETITION OF NORTH COUNTY COMMUNICATIONS CORPORATION
FOR FORMAL PROCEEDING AND HEARING**

I. INTRODUCTION AND SUMMARY

Pursuant to Rule 28-106.201, Florida Admin. Code, North County Communications Corp. ("NCC" or "Petitioner") hereby objects to the action proposed by the Commission in Order No. PSC-11-0405-PAA-TX ("Proposed Order") issued September 23, 2011. NCC requests a formal proceeding and hearing pursuant to Section 120.57, Florida Stat. NCC is also open to mediating the matter and submits the settlement proposal explained herein.

II. PETITIONER IDENTIFICATION AND AFFECTED AGENCY

Petitioner NCC, a California corporation, with principal offices at 3802 Rosecrans Avenue, Suite 485, San Diego, California 92110 (tel: 619.364.4750), operates as a competitive local exchange carrier ("CLEC") pursuant to state certifications granted in, among other states, California, Oregon, Washington, Arizona, and Illinois. NCC's corporate contact is Todd Lesser, President & CEO. In addition, NCC's representative and regulatory/legal counsel is R. Dale Dixon, Jr., Law Offices of Dale Dixon, 7316 Esfera Street, Carlsbad, California 92009 (tel: 760.452.6661).

The agency affected by this matter is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

III. PETITIONER'S INTEREST & NOTICE OF PROPOSED ORDER

NCC's substantial interests will be affected by consummation of the Proposed Order because the Proposed Order revokes NCC's carrier certification in Florida. NCC received notice of the Commission's Proposed Order via email after the Proposed Order was issued.

IV. DISPUTED MATERIAL FACTS & NCC'S CONTENTIONS

While Petitioner does not dispute certain facts (e.g., delayed regulatory assessment fee payments and inclusion of incorrect information with its application renewal materials), NCC contends that the errors were ministerial and inadvertent, and were not intended to conceal information from or mislead the Commission or Staff. In addition, NCC inadvertently omitted cites to pending litigation because the litigation consists of collection matters in which NCC is attempting, as Plaintiff, to collect call termination fees owed by other carriers.

NCC was in the process of negotiating a resolution of the matter and was surprised to receive a Proposed Order. When NCC last spoke to Staff, Mr. Lesser was under the impression that a final proposal would be agreed to, under which NCC would (i) make a one-time payment to the State's General Fund in the amount of \$2,500 and (ii) implement a more reliable system of calendar checks and ticklers to ensure future compliance with Commission filing and payment deadlines.

V. REQUESTED RELIEF: REVERSAL OF THE PROPOSED ORDER

NCC does not deny that it missed the Commission's payment deadlines, and NCC sincerely regrets its lack of oversight with respect to those obligations. The omissions and inadvertent inclusions were a result of submitting attachments from previous Florida filings. The previously submitted attachments were reattached because NCC, which has not begun operations in Florida (in large part due to the nationwide anti-competitive behaviors of Verizon), did not immediately recognize that any changes were warranted. NCC immediately corrected its filing when the problems were brought to its attention.

Based on cases provided to NCC by Staff, more egregious examples of noncompliance have resulted in approved applications, and NCC respectfully requests that the Commission allow NCC the same opportunity to improve its filing compliance.

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VI. SETTLEMENT PROPOSAL

NCC is committing financial and human resources to ensure future compliance with the Commission's filing and payment deadlines. NCC has retained regulatory counsel (see above Sec. II) with 16+ years of telecom corporate, regulatory and litigation experience. Counsel will monitor closely NCC's calendar system and create a triple calendar system that consists of paper calendars, electronic calendar reminder systems, and a third-party calendar to be maintained and monitored by NCC's counsel.

In addition, NCC proposes to make a one-time voluntary payment to the State General Fund in the amount of \$2,500. Prior to the release of the Proposed Order, Staff indicated that such an amount would be appropriate in light of the circumstances in this case.

VII. CONCLUSION

NCC looks forward to launching successful CLEC operations in Florida and maintaining an excellent relationship with the Commission and Staff, and to that end, NCC requests that the Commission not consummate the Proposed Order, and instead, reinstate NCC's certification and accept NCC's proposed settlement and assurances of future compliance.

Respectfully submitted,

s/R. Dale Dixon, Jr.

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Counsel for North County Communications Corp.

s/Todd Lesser

Todd Lesser, President & CEO
North County Communications Corp.

Dated: October 10, 2011

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