

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

OCTOBER 17, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (WILKINS, MUSSELWHITE) *WJW* *BTM*
DIVISION OF LEGAL SERVICES (BROWN) *MCB* *TW*

RE: DOCKET NO. 960886-T1; JOINT PETITION FOR APPROVAL OF
TRANSFER OF CONTROLLING STOCK INTEREST IN NORTHEAST
FLORIDA TELEPHONE COMPANY, INC. TO NEFCOM, INC., AND
MOTION FOR WAIVER OF RULE.

AGENDA : 10/29/96 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

SPECIAL INSTRUCTIONS: I:PSC/CMU/WP/960886.RCM

CASE BACKGROUND

On August 5, 1996, the above docket was opened for approval to transfer the controlling stock interest in Northeast Florida Telephone Company to Nefcom, Inc. Nefcom, Inc. is a Florida corporation incorporated to act as a holding company to own Northeast, and to take advantage of business opportunities in the telecommunications field and related industries.

Further, Nefcom, Inc. requested a waiver of Rule 25-4.005, Florida Administrative Code, Transfer of Certificate of Public Convenience and Necessity as to All or a Portion of Service Area, since there is no proposed change in the geographic service area, customers served, certificate name or in the tariff on file with this Commission.

DOCUMENT NUMBER-DATE

11072 OCT 16 96

FPSC-RECORDS/REPORTING

DOCKET NO. 960886-TI
DATE: October 17, 1996

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the transfer of the controlling stock interest in NORTHEAST FLORIDA TELEPHONE COMPANY, INC. to NEFCOM, INC.?

RECOMMENDATION: Yes.

STAFF ANALYSIS: NORTHEAST FLORIDA TELEPHONE COMPANY, INC. (Northeast) is a small local exchange telephone company that provides local exchange service in Baker County, Florida, including the City of Macclenny. Further, Northeast has not elected price regulation and is a rate base, rate of return regulated company.

Northeast and Nefcom, Inc. and the stockholders of Northeast executed an "Agreement and Plan of Reorganization" with the intent and purpose to qualify as a tax-free reorganization. There will be no change in the name, the tariffs, or operating scope of service offered.

ISSUE 2: Should the Commission approve the waiver of Rule 25-4.005, Florida Administrative Code, Transfer of Certificate of Public Convenience and Necessity as to All or a Portion of Service Areas?

RECOMMENDATION: Yes.

STAFF ANALYSIS: It appears that Rule 25-4.005, Florida Administrative Code, Transfer of Certificate of Public Convenience and Necessity as to All or a Portion of Service Areas (page 8) does not apply to this case since there is no proposed change in the geographic service area or the customers served, nor is there any transfer of the certificate. However, the company's petition describes the notification procedure it will use. Staff agrees with the company that provision of a list of its subscribers to the Commission is not warranted in this case. Therefore, we recommend approval of the waiver as requested.

DOCKET NO. 960886-TI
DATE: October 17, 1996

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected by the Commission's Proposed Agency Action, files a protest within 21 days of the issuance date of the order, this docket should be closed.

STAFF ANALYSIS: This docket should be closed, if no person whose substantial interests are affected by the Commission's Proposed Agency Action, files a protest within 21 days of the issuance date of the order.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition for)
the approval of the transfer)
of controlling stock interest)
in Northeast Florida Telephone)
Company, Inc.)

Docket No.

Filed: August 5, 1996

JOINT PETITION FOR THE APPROVAL OF THE
TRANSFER OF CONTROLLING STOCK INTEREST IN
NORTHEAST FLORIDA TELEPHONE COMPANY, INC.
AND MOTION FOR WAIVER OF RULE

Pursuant to Section 364.33, Florida Statutes, Northeast Florida Telephone Company (Northeast) and NEFCOM, Inc. hereby jointly petition for approval of the transfer of all of the issued and outstanding stock of Northeast to NEFCOM, Inc. and, in support of their joint petition, state as follows:

1. The names and addresses of Petitioners are:

NEFCOM, Inc.	Northeast Florida Telephone Company
130 North Fourth Street	130 North Fourth Street
Macclenny, Florida 32063	Macclenny, Florida 32063

All notices, orders and correspondence to either of the Joint Petitioners should be addressed to: David B. Erwin, Young, van Assenderp & Varnadoe, P.A., 225 S. Adams Street, Suite 200, Tallahassee, Florida 32301.

2. Northeast is a small local exchange telephone company which has not elected price regulation. Northeast is a rate base, rate of return regulated company. The company provides local exchange service in most of Baker County, Florida, including service to the city of Macclenny. Northeast holds Certificate of Public Convenience and Necessity #20, issued by the Florida Public Service Commission (FPSC). Northeast has issued and outstanding

2,135 shares of common stock of a par value of \$10.00 per share.
The following individuals own all of the shares of Northeast:

Gladys R. Walker
Leon Conner
Linda S. Combs
Fred Paul Conner

3. NEFCOM, Inc. is a Florida Corporation that was incorporated by Gladys R. Walker on February 14, 1996, for the purpose of acting as a holding company to own Northeast, the regulated local exchange company, and to facilitate taking advantage of business opportunities in the unregulated telecommunications field and in related industries. A copy of the Articles of Incorporation of NEFCOM, Inc. is attached hereto as Attachment A.

4. On April 8, 1996, Northeast and NEFCOM, Inc. and the stockholders of Northeast executed an "Agreement and Plan of Reorganization." The "Agreement and Plan of Reorganization" is attached hereto as Attachment B. The intent of and purpose for the plan of reorganization is to qualify as a tax-free reorganization under Section 368(a)(1)(B) of the Internal Revenue Code of 1986. The affected parties sought a private letter ruling from the IRS that would confirm the tax free nature of the reorganization. The IRS refused, since the IRS recently adopted a procedure that precludes rulings in cases where the law and regulations are well defined. In lieu of an IRS ruling, the parties have obtained an opinion letter from the C.P.A. firm of Frederick & Warriner. A copy of the opinion letter is attached as Attachment C. It

indicates that the reorganization should qualify as a tax-free reorganization.

5. Under the plan of reorganization, all of the issued and outstanding stock of Northeast shall be acquired by NEFCOM, Inc. in exchange solely for voting stock of NEFCOM, Inc. Pursuant to the plan of reorganization, the stock of Northeast may not be transferred unless approval for such transfer is granted by the FPSC, pursuant to Section 364.33, Florida Statutes, as reflected by an FPSC order duly issued or by an administrative determination by FPSC staff, if authorized.

6. NEFCOM, Inc. does not propose any change to the name of Northeast, to the tariffs of Northeast or to the scope of service offered. No change in key operating personnel or management is anticipated, although management will be centralized in NEFCOM, Inc. NEFCOM, Inc. anticipates continued successful operation and management of the local exchange telephone business of Northeast in a manner that is transparent to the customers of Northeast.

7. NEFCOM, Inc. will not purchase any assets of Northeast, and there will be no request for any acquisition adjustment. There will be no transfer of Northeast's Certificate #20. This petition constitutes request for approval of a corporate reorganization of the sort allowed by Section 207(c)(3) of the FPSC Administrative Procedures Manual to be approved by the Director of the Division of Records and Reporting in coordination with the Division of Communications and the Division of Legal Services.

8. The Joint Petitioners do not believe that Rule 25-4.005,

F.A.C., applies to this case because there is no proposed change in the geographic service area or the customers served, nor is there any transfer of the certificate of Northeast. Nevertheless, in an attempt to substantially comply with the rule, NEFCOM, Inc. will give notice of the proposed stock exchange, as follows:

a. Advertisements in a newspaper of general circulation in Baker County will be published twice during the month of August, 1996, as soon as possible after the filing of this Petition. A copy of the proposed advertisement is attached as Attachment D. Proof of publication will be filed when available.

b. Notice will be sent to each municipality in the Northeast service territory in the month of August, 1996, as soon as possible after the filing of this Petition, and an affidavit that the notice was sent will be supplied, along with a copy of the notice, after notice has been given.

c. Notice to customers will be mailed to each customer as soon as possible after the filing of this petition. A copy of the proposed notice is attached as Attachment E, and an affidavit that the notice was mailed will be supplied after the mailing has been accomplished.

d. Notice has been given to Public Counsel through service of a copy of this Joint Petition.

9. The joint petitioners believe that furnishing notice as described above in paragraph 8 will achieve substantial compliance with the provisions of Rule 25-4.005, F.A.C., and that compliance

with that portion of the rule that would require providing the Commission with the name and address of each subscriber to whom notice was mailed would serve no useful purpose and would be burdensome and expensive. Consequently, the Joint Petitioners move that the Commission waive that portion of Rule 25-4.005(1)(c) that requires furnishing a list of names and addresses to the Commission.

WHEREFORE and in consideration of the above, Northeast Florida Telephone Company and NEFCOM, Inc. request that the Commission find that the stock exchange proposed by the parties, which would place the controlling stock interest of Northeast Florida Telephone Company in NEFCOM, Inc., instead of individual shareholders, is not inconsistent with the public interest, and the Joint Petitioners request that the Commission approve the plan of reorganization and transfer of controlling stock interest, pursuant to Section 364.33, Florida Statutes.

Respectfully submitted,



David B. Erwin
Young, van Assenderp & Varnadoe, P.A.
P. O. Box 1833
Tallahassee, Florida 32302

Attorney for the Joint Petitioners

25-4.005 Transfer of Certificate of Public Convenience and Necessity as to All or a Portion of Service Areas.

(1) Request for approval by the Commission of the transfer of any certificate of public convenience and necessity (or portion thereof) shall be made by joint petition of the certificate holder and transferee after reasonable notice has been given to all subscribers affected by the proposed transfer. Requests for approval shall be accompanied by an affidavit that notice of intention to file the petition has been given:

(a) By mail or personal delivery to the governing bodies of the counties and municipalities affected, to the Public Counsel, and to the Commission,

(b) By a legal advertisement in a newspaper of general circulation in the area affected and published on two (2) separate occasions at least two (2) weeks prior to the filing of the joint petition on the proposed transfer, and

(c) By written notice subject to Commission approval, issued to each subscriber in the area to be transferred concurrent with the filing of the petition. A complete list, by telephone number (numerical sequence), name, address, and class of service of all subscribers sent a written notice shall be furnished the Commission immediately following distribution.

(2) Upon approving a transfer of certificate, or portion thereof, the Commission will cancel same and reissue in the name of the transferee or amend the description of the service area of both.

(3) Such joint petitions shall include detailed descriptions of the affected boundaries; the number of subscribers, if any, in each petitioned area; changes in rates; service being provided by either petitioner in areas to be transferred; pending applications for service held by either petitioner; change in calling scope; customers to be transferred; deposits and deposit interest; any financial exchange or consideration for the proposed change, and a list by name and telephone number of all customers who will be exempt from the proposed change.

(4) Any subscriber or group of subscribers of a telephone company may petition the Commission for transfer from the service area of such telephone company to that of another telephone company serving contiguous territory. After public hearing, if one is requested, the Commission may, on a finding of just cause, require such transfer and amend the existing certificates of the telephone companies involved or change the exchange service area maps to reflect any changes found justified.

(5) If a customer survey is conducted by a telephone company among customers affected by the proposed transfer, return postage shall be paid by the company serving the affected customer and survey ballots shall be returnable to the Public Service Commission, Attention: Communications Department, for tabulation.

Specific Authority: 350.127(2), F.S.

Law Implemented: 364.335, F.S.

History: New 12/1/68, Amended 5/4/81, formerly 25-4.05.