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A Law Partnership Including Professional Corporations

per RGO/Pruitt

October 27, 2000

By Courier

Ms. Diana Caldwell, Esq.
Division of Legal Services
Florida Public Service Commission
Room 370, Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

OCT 27 2000

001621 - TX

Re: Settlement Offer by Comm South Companies, Inc.

Dear Ms. Caldwell:

Pursuant to our discussions, Comm South Companies, Inc. ("Comm South"), by its attorneys, hereby submits this letter revising its Settlement Offer dated October 4, 2000. In order to resolve the matters related to the revocation of Comm South's certificate, Comm South agrees to the following:

- 1) payment of a monetary settlement of \$7,500 to the State of Florida General Revenue Fund within 20 days of the Commission's order accepting this Settlement Offer;
- 2) revision and establishment of procedures to ensure compliance with Commission filing requirements and data requests; and
- 3) submission of information regarding its operations for inclusion in the Commission's current local competition report.

It is our understanding that Commission approval of this Settlement Offer resolves all issues related to the revocation of Comm South's certificate for its failure to respond to the Commission's data request and permits Comm South to apply for and receive a new certificate to provide ALEC services. Pending the outcome of the application, Comm South in the public interest will continue to provide service to its subscribers.

Submitted herewith are a copy of our application for a new certificate filed with the Director of Records and Reporting and a copy of Comm South's responses to the

DOCUMENT NUMBER - DATE

00135 JAN-30

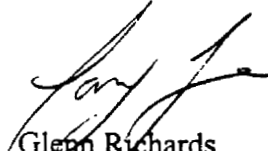
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2000 ALEC Data Request. It is our understanding that this Settlement Offer and Comm South's application will be addressed by the Commission concurrently.

Please direct any questions to the undersigned.

Very truly yours,



Glenn Richards
Tony Lin

Enclosures

cc: Dick Ivey
Norman H. Horton Jr., Esq.

Document #: 1022803 v.1

ShawPittman

A Law Partnership Including Professional Corporations

October 4, 2000

By Facsimile

Ms. Diana Caldwell
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Settlement Offer by Comm South Companies, Inc. d/b/a Florida
Comm South**

Dear Ms. Caldwell:

Comm South Companies, Inc. ("Comm South"), formerly Onyx Distributing Company, Inc. d/b/a Florida Comm South, by its attorneys, hereby submits this letter proposing a settlement offer for reinstatement of its certificate to provide ALEC services or, in the alternative, grant of a new certificate. Pursuant to Commission Order PSC-00-0680-SC-TX in Docket No. 000230-TX, Comm South's certificate of authority (Certificate Number 4757) was canceled on April 12, 2000 for failure to respond to a Commission information request.

Comm South has undergone personnel changes and a corporate office relocation, which contributed to Comm South's failure to respond to the Commission's information request. Moreover, despite Comm South's regular dealings with the Commission during the past 12 months, Comm South only recently learned of its canceled certificate. Comm South does not believe it ever received written notice of the Order to Show Cause. Similarly, Comm South's outside regulatory counsel was never served notice of the Order to Show Cause. In light of these circumstances, Comm South believes it is in the public interest for the Commission to accept the settlement offer proposed herein and to reinstate Comm South's certificate or, in the alternative, to grant a new certificate. In order to prevent undue hardship to its customers, Comm South also requests that the Commission allow the company to continue to provide services to its almost 8,000 local service customers pending the outcome of this proceeding.

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Background

Comm South (formerly, Onyx Distributing Company, Inc. d/b/a Florida Comm South) provides service to nearly 8,000 customers in the State of Florida.¹ Comm South began offering ALEC services in Florida following its authorization on November 11, 1996. See Docket No. 960987-TX. To date, it has had an excellent service record. Since its authorization, Comm South has complied with Commission regulations, including payment of telecommunications regulatory assessment fees, and responded to Commission inquiries.

On June 25, 1999 the Commission sent by certified letter a request for information to Marty Oakes, the company's former regulatory manager. Receiving no response, the Commission on December 6, 1999 sent another certified letter to Mr. Oakes. Although it is unclear whether Mr. Oakes, who left the Company in March of 1999, received the letter, Bobby Glover, his successor, was not aware of the requests until September 2000 when a Comm South sales agent was informed that Comm South was no longer authorized to provide services in Florida.

In late March the Commission issued a staff recommendation with the intent of notifying Comm South of a Show Cause hearing in which Comm South would be required to explain why it had not responded to the two Commission requests for information. According to the Commission, the recommendation was not sent by certified mail but was sent via facsimile at the number Comm South provided in its original application. Because neither Comm South nor its outside regulatory counsel received the staff recommendation, Comm South did not appear at the hearing. Subsequently, the Commission issued Order No. PSC-00-0680-SC-TX on April 12, 2000 providing that Comm South respond in writing in 21 days explaining why it should not be fined \$10,000 or have its certificate canceled for apparent violation of Section 364.183(1). Similarly, the Show Cause Order was sent via facsimile and not certified mail, and neither Comm South nor its counsel received the Order. Comm South did not respond, and the Commission canceled its certification.

¹ The Commission approved the name change and transfer of control in Order No. PSC-99-1914-CO-TX (September 27, 1999) in Docket No. 990891-TX.

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Mitigating Factors

It is Comm South's policy and practice to comply with all rules and regulations of states in which it operates. Nonetheless, for reasons stated herein, there have been minor lapses in the execution of that policy. Comm South offers the following mitigating factors in support of its request for reinstatement or, alternatively, grant of a new certificate. First, Comm South's past dealings with the Commission evidence its willingness to comply with Commission regulations and requests. Further, its recent and repeated interactions with Commission staff indicate that its failure to respond to the Commission request for information was completely unintentional and only a result of its lack of awareness of the request. Second, Comm South was involved in a major corporate relocation during the period in which the recommendation and Show Cause Order were sent.

Throughout the period in which the request was outstanding Comm South, through its outside regulatory counsel and Mr. Glover, had numerous contacts with Commission staff and never became aware of the outstanding Commission data request or that the company's certificate was in jeopardy of being revoked. For instance, on September 24, 1999, Comm South responded to a Commission request to provide a Price List. On September 27, 1999, the Commission by Order No. PSC-99-1914-CO-TX approved the transfer of control of Onyx Distributing Company, Inc. to Topp Telecom, Inc. Subsequently, on October 15, 1999, Comm South responded to a survey conducted on behalf of the Commission by KPMG LLP regarding BellSouth's Operational Support Systems. On the same day, Comm South responded by facsimile to a request by the Commission for comments regarding Florida's telecommunications regulations. On November 19, 1999, Comm South registered with the MBIA MuniServices Company for public service tax purposes, as required by Florida law. Additionally, on December 9, 1999, Comm South submitted a request to the Commission for approval of its resale agreement with ALLTEL Communications Services. The Commission approved this request in Order No. PSC-00-0352-FOF-TP (Feb. 21, 2000). On March 14, 2000, Comm South paid its \$2,636 1999 telecommunications regulatory assessment fee. More recently, in April of this year Comm South twice sent facsimiles to Stephanie Cater at the Commission regarding information on carrier charges. At no time during any of these matters did Commission staff inquire about the data request or inform Comm South about the Show Cause hearing or Order.

From the period between April 10 and May 19, 2000, Comm South and its affiliated corporate entities moved the company headquarters from 6830 Walling Lane,

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Dallas, TX 75231 to 2909 N. Buckner Boulevard, Suite 800, Dallas, TX 75228. Although the companies facsimile number did not change, apparently during the transition the faxed copies of the recommendation and Show Cause Order failed to reach Mr. Glover or other responsible people at Comm South. Admittedly, the Company has, as a result of the corporate relocation, missed several state filings in 1999 and the first half of 2000. In each case, however, the Company subsequently complied fully with each state commission request.²

Settlement Offer

Comm South believes these are compelling reasons for the Commission to reinstate its certificate or, alternatively, to grant a new certificate. Comm South proposes the following settlement offer in furtherance of its request:

- 1) a monetary settlement of \$3,500 to the State of Florida General Revenue Fund;
- 2) to set up procedures to prevent similar incidents from reoccurring;
- 3) to remit the settlement within 20 business days; and
- 4) to submit within 20 business days information regarding its operations for inclusion in the Commission's current local competition report.

The Commission has approved settlement offers of \$3,500 from other companies that neither provided the requested information nor presented evidence of reasonable mitigating factors to account for its failure to provide the information. *See, e.g.*, Order No. PSC-00-1308-AS-TX (July 19, 2000). Comm South will provide the addresses of its regulatory counsel, local counsel and its agent authorized to receive service of process in Florida to ensure that future actions by the Commission will not go unnoticed. The Company has also hired outside regulatory counsel to prepare a comprehensive listing of

² As a result of administrative problems associated with the corporate reallocation, Comm South had its telecommunications certificates revoked in the states of Arkansas and Alabama. In both states, Comm South failed to file an annual report after notice was mailed to the company's old address. Comm South did not receive either the Alabama or Arkansas notice and, subsequently, its certifications were revoked. Comm South has since had its certification reinstated in Alabama. *See* Alabama Public Service Commission, Order, Docket No. 27495 (September 12, 2000). In Arkansas, Comm South has remedied its failure to file the annual report and expects its license to be reinstated shortly. *See* Request for Reinstatement, Docket No. 00-121-U (August 21, 2000).

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all state public service commission regulatory requirements. Comm South is also in the process of hiring two to four additional regulatory personnel to aid in the compliance of all state laws and state commission regulations.

Accordingly, Comm South requests that the Commission staff recommend that the Commission accept the proposed settlement offer and expeditiously reinstate Comm South's certificate to provide ALEC services or, in the alternative, approve a new certificate. Comm South also requests that in the interim the Commission allow the Company to continue to provide service in Florida. The public interest is best served if the Company is permitted to continue providing local exchange services to Florida consumers. Comm South's customers should not lose service or be required to find new service providers as a result of this situation.

Please direct any questions to the undersigned.

Very truly yours,



Glenn Richards
Tony Lin

cc: Dick Ivey
Doc Horton