

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide competitive local exchange telecommunications service by USA Telephone Inc. d/b/a Choice One Telecom.	DOCKET NO. 050238-TX ORDER NO. PSC-05-0587-PAA-TX ISSUED: May 26, 2005
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION ORDER
GRANTING A CERTIFICATE TO PROVIDE COMPETITIVE LOCAL EXCHANGE
SERVICE BY USA TELEPHONE, INC. D/B/A CHOICE ONE TELEPHONE

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.

I. Case Background

This docket addresses USA Telephone Inc. d/b/a Choice One Telecom's (Choice One) settlement offer and application to obtain a Certificate of Public Convenience and Necessity to operate as a Competitive Local Exchange Telecommunications Company (CLEC) in Florida. Choice One originally obtained authority (Certificate No. 5647) from this Commission to operate as a CLEC on June 13, 1998. Choice One registered as an Interexchange Telecommunications Company (IXC) on December 27, 2001.

Choice One's CLEC Certificate No. 5647 was cancelled effective November 5, 2004, in Docket No. 040845-TX, In Re: Compliance investigation of USA Telephone Inc. d/b/a Choice One Telecom for apparent violation of Section 364.183(1), F.S., Access to Company Records, and Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies.

Docket No. 040845-TX had been established as a result of a random audit of the company's 2002 Regulatory Assessment Fee (RAF) Return. Choice One failed to provide staff sufficient information to validate payment of fees to the Florida Telecommunications Relay, Inc. (FTRI). Rule 25-4.160, Florida Administrative Code, Operation of Telecommunications Relay

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Services, requires that local exchange companies impose a monthly surcharge on all local exchange telecommunications company subscribers. The surcharges fund the operation of the Florida Relay Service. As a result, we imposed a \$10,000 penalty upon the company for its apparent violation of Section 364.183, Florida Statutes, access to Company Records.

There was another issue in Docket No. 040845-TX as well. Choice One had failed to pay its 2003 RAF. This was the company's second violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies; thus, we imposed a penalty of \$1,000.

Choice One failed to protest our Proposed Agency Action Order, PSC-04-0994-PAA-TX, issued on October 11, 2004, in Docket No. 040845-TX. Choice One did not pay the penalties; therefore, Choice One's CLEC certificate was cancelled.

In a related action, Docket No. 040920-TI, In Re: Compliance investigation of USA Telephone Inc. d/b/a Choice One Telecom for apparent violation of Section 364.336, Florida Statutes, Choice One's IXC tariff was cancelled and its name was removed from the register. We also imposed a \$500 penalty for Choice One's violation of Section 364.336, Florida Statutes, Regulatory Assessment Fees. The company failed to protest our Proposed Agency Action Order, PSC-04-1198-PAA-TI, issued on December 3, 2004, and failed to pay the \$500 penalty.

Choice One continued to operate as a CLEC in Florida, currently serving more than 3,000 customers. We learned this in mid-March 2005, when Mr. Jean Cherubin, vice-president of Choice One, contacted us seeking information about reacquiring a CLEC certificate. Mr. Cherubin advised us that the company does not offer IXC services and indicated that he would not pursue registration as an IXC.

This Commission has jurisdiction over these matters pursuant to Sections 364.04, 364.285, 364.336, and 364.337.

II. Decision

Upon consideration, we accept the settlement offer proposed by USA Telephone Inc. d/b/a Choice One Telecom, and grant USA Telephone Inc. Certificate No. 8587 to operate as a competitive local exchange telecommunications company in Florida. This certificate shall not, however, become active until full compliance with the settlement offer.

To summarize, the previous issues that were not satisfied by Choice One are as follows:

Order PSC-04-0994-PAA-TX

- Payment of penalties in the amount of \$11,000,
- Payment of the 2003 RAF, plus statutory late payment charges, and
- Provide information.

Order PSC-04-1198-PAA-TI

- Payment of a penalty in the amount of \$500, and
- Payment of the 2003 RAF, plus statutory late payment charges.

Choice One has now paid all outstanding 2003 and 2004 RAF, plus statutory late payment charges, for both its CLEC and IXC operations. The company reported \$1,940,300.94 gross intrastate operating revenue for its CLEC operations in 2004. In addition, the company proposes the following:

- Pay \$7,500 as settlement of the total assessed penalty of \$11,500.
- In the future, respond promptly and pay RAF on a timely basis.
- Provide data described in Attachment A and upon analysis, pay all required fees to the FTRI.

We note that Choice One has since paid the \$7,500.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement offer proposed by USA Telephone Inc. d/b/a Choice One Telecom is accepted. It is further

ORDERED that USA Telephone Inc. is granted Certificate No. 8587, but the certificate shall not become active until the company has fully complied with all the terms of the settlement. It is further

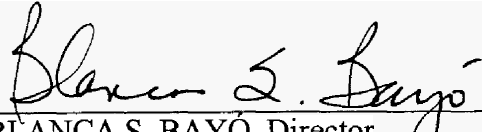
ORDERED by the Florida Public Service Commission that this Order will become effective upon the issuance of a Consummating Order unless a person whose substantial interests are affected by our decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. It is further

ORDERED by the Florida Public Service Commission that if a protest is filed, as provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute shall be deemed stipulated. It is further

ORDERED by the Florida Public Service Commission that if Choice One fails to fully comply with all terms of the settlement within 15 days of the issuance of the Consummating Order, resulting in CLEC Certificate No. 8587 not becoming active, our staff shall notify underlying carriers to discontinue providing the company wholesale local exchange services, and Choice One shall be required to immediately cease and desist providing any telecommunications services in Florida. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of May, 2005.


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

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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 16, 2005.

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.