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Hublic Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVAKDSSIOH TALLAHASSEE, FLORIDA 32399-0850 CLERK

-M-E-M-O-R-A-N-D-U-M-

- **DATE:** June 23, 2005
- TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)
- FROM: Division of Competitive Markets & Enforcement (Buys) DRB MARKETS & Office of the General Counsel (Fordham) c. F. A.
- **RE:** Docket No. 050363-TP 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.
- AGENDA: 07/05/05 Regular Agenda Proposed Agency Action Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

- **PREHEARING OFFICER:** Administrative
- CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050363.RCM.DOC

Case Background

June 16, 1999 – The Florida Public Service Commission (Commission) granted Southeastern Services, Inc. (SSI) a certificate of public convenience and necessity (certificate) to provide Competitive Local Exchange Company (CLEC) services (Certificate No. 7018).

March 23, 2001 - The Commission granted SSI a certificate to provide Alternative Access Vendor (AAV) services (Certificate No. 7767).

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December 28, 2001 - The Commission granted SSI a certificate to provide Interexchange Company (IXC) services (Certificate No. 7988).

March 31, 2005 - Northeast Florida Telephone Company (NEFCOM) submitted a letter, dated March 29, 2005, indicating that the applications for certificates filed by SSI failed to disclose that Mr. Mark Woods, President of SSI, was adjudicated guilty of the felony crime of grand theft on December 4, 1979, and requested that the Commission conduct an investigation into the matter.

April 1, 2005 through April 29, 2005 – Commission staff completed its initial investigation into the matter and determined that SSI did not disclose the information as required on the AAV, CLEC, and IXC certificate application forms. Staff sent SSI a letter on April 12, 2005, requesting a written response explaining SSI's position and the company's proposal to resolve the issue.

May 4, 2005 – SSI, through its legal counsel, submitted a letter, dated May 4, 2005, in which the company explained the circumstances of Mr. Woods' felony adjudication.

May 19, 2005 – SSI, through its legal counsel, submitted a letter, dated May 19, 2005, in which the company offered to make a \$2,500 contribution to the Florida General Revenue Fund to settle the matter (Attachment A).

June 7, 2005 – SSI, through its legal counsel, submitted a letter, dated June 6, 2005, in which the company provided amendments to the company's original applications addressing Mr. Wood's felony adjudication (Attachment B).

Discussion of Issues

Issue 1: Should the Commission accept Southeastern Services, Inc.'s settlement offer to resolve its apparent failure to disclose required information on each of its applications for a certificate of public convenience and necessity to provide services within the State of Florida as an Alternative Access Vendor, a Competitive Local Exchange Company, and an Interexchange Company?

Staff Recommendation: Yes.

<u>Staff Analysis:</u> Section 364.335(1)(a)&(d), Florida Statutes, Application for a Certificate, states:

(1) Each applicant for a certificate shall:

(a) Provide all information required by rule or order of the commission, which may include a detailed inquiry into the ability of the applicant to provide service, . . .

(d) Submit an affidavit that the applicant has caused notice of its application to be given to such persons and in such manner as may be prescribed by commission rule.

Rule 25-24.810, Florida Administrative Code (F.A.C.), Application for a Certificate, requires that an applicant for a certificate shall submit an application on Form PSC/CMP 8 (11/95) entitled "Application Form for Authority to Provide Competitive Local Exchange Service Within the State of Florida", and is incorporated into this rule by reference.

Rule 25-4.720, F.A.C., Application for a Certificate, requires that an applicant seeking to provide Alternative Access Vendor Service shall submit an application on Commission Form PSC/CMP 43 (1/95), entitled "Application Form for Authority to Provide Alternative Access Vendor Service Within the State of Florida," and is incorporated into this rule by reference.

Rule 25-4.471, F.A.C., Application for Certificate, requires that an applicant desiring to apply for a certificate shall submit an application on Commission Form PSC/CMP 31 (12/96), entitled "Application Form for Authority to Provide Interexchange Telecommunications Service Between Points Within the State of Florida," and is incorporated into this rule by reference.

Each of the above referenced application forms contains a section whereby the applicant is required to indicate if any of the officers, directors, or any of the ten largest stockholders have previously been found guilty of any felony or of any crime. In each of the applications submitted by SSI for an AAV, CLEC, and IXC certificate, Mr. Woods listed "No" or "None" in response to the aforementioned question. However, documents provided in NEFCOM's letter dated March 29, 2005, indicate that Mr. Woods entered a plea of Nolo Contendere to grand theft on December 4, 1979.

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To resolve this matter, SSI submitted a settlement offer to do the following:

1. Amend the certificate applications so that each application lists "Yes" to the question if any officer has previously been found guilty of any felony, include an explanation of the circumstances, and sign an affidavit attesting to the accuracy of the information.

2. Voluntarily contribute the sum of \$2,500 to the Florida General Revenue Fund.

The amended applications have been placed in the appropriate docket files. SSI is current on its payments of Regulatory Assessment Fees for each of its three certificates and has no outstanding complaints. Further, the Commission has received only two consumer complaints against SSI since obtaining its certificates; one on January 25, 2001, and the second on January 3, 2002.

The subject matter at issue in this recommendation has never been previously addressed by the Commission at Agenda. The Commission is vested with jurisdiction in this matter pursuant to Sections 364.285, 364.335, 364.337, 364.345, Florida Statutes. Accordingly, staff recommends that the Commission accept Southeastern Services, Inc.'s settlement offer to resolve its apparent failure to disclose required information on each of its applications for a certificate of public convenience and necessity to provide services within the State of Florida as an Alternative Access Vendor, a Competitive Local Exchange Company, and an Interexchange Company.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's 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. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If SSI fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If SSI fails to pay the amount of the voluntary contribution within fourteen (14) calendar days of the issuance of the Consummating Order, Certificate Nos. 7018, 7767, and 7988 should be cancelled. If SSI's certificates are cancelled, the company should be required to immediately cease and desist providing all intrastate telecommunications services in Florida. This docket should be closed administratively upon either receipt of the payment of the voluntary contribution or upon the cancellation of the company's certificates. (L. Fordham)

<u>Staff Analysis</u>: Staff recommends that the Commission take action as set forth in its recommendation.

Law Offices Of Attachment A SUZANNE FANNON SUMMERLIN, P.A.

2536 CAPITAL MEDICAL BOULEVARD TALLAHASSEE, FLORIDA 32309

TELEPHONE (850) 656-2288 TELECOPIER (850) 656-5589

COMPETITIVE SET ICES

May 19, 2005

Mr. Rick Moses, Chief, Bureau of Service Quality
Lee Fordham, Assistant General Counsel
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
RE: Inquiry into accuracy of information provided on applications for certification of service for Southeastern Services, Inc.

Dear Gentlemen:

I represent Mr. Mark Woods, President of Southeastern Services, Inc. Southeastern Services, Inc. previously responded by letter dated May 4, 2005, to Mr. Dale Buys' letter of inquiry of April 12, 2005, requesting clarification and explanation regarding Mr. Woods' negative response to a question appearing on each of three applications for certification (for Competitive Local Exchange Company ("CLEC") certification, Interexchange Carrier ("IXC") certification, and Alternative Access Vendor ("AAV") certification).

As we stated in our May 4, 2005, letter, when Mr. Woods was approximately twenty-five years old and was running his first business, an employment agency, he was charged with grand theft of approximately \$8,000 in connection with that business. In 1979, Mr. Woods pled "no contest" to that felony charge only because he did not have the appropriate business records to properly defend himself against the charge.

After pleading "no contest" in 1979, Mr. Woods subsequently pursued what he understood to be the clearing of his record with the help of an attorney. Mr. Woods' attorney at that time advised him that he had, in fact, had his record "cleared." Mr. Woods believed that he would no longer be required to divulge the felony conviction for any purpose. That was his understanding of having had his record "cleared." As you can see from the attached Certificate of Restoration of Civil Rights, Mr. Woods had his civil rights restored on November 19, 1981. Therefore, Mr. Woods responded in the negative to a question on three different certification applications as to whether any officer of the applicant, Southeastern Services, Inc., had been found guilty of a felony or any other crime.

This event in Mr. Wood's past history occurred over twenty-five years ago and is common knowledge in the Macclenny community where Mr. Woods lives. In the ensuing years, Mr. Woods has always taken responsibility for the matter that resulted from his youth and lack of business expertise at that time, as well as a lack of proper accounting records. Mr. Woods went on to become an extremely well-known and wellrespected business person and citizen. Mr. Woods has been the pastor of a church in Macclenny for twenty years. Mr. Woods' character is above reproach. Mr. Woods had absolutely no intention of misrepresenting this prior felony conviction to the Florida Public Service Commission. He believed he was being completely accurate when he responded in the negative to this question on the three certification applications. Had Mr. Woods realized that his record being "cleared" did not permit him to give a negative response to the question of whether any officer of Southeastern Services, Inc. had ever been found guilty of a felony or other crime, he would certainly have responded yes to the question.

Mr. Woods' failure to respond affirmatively to the question on these three certification applications was based on what he understood to be correct legal advice from the attorney who represented him in that matter over twenty-five years ago. Mr. Woods' inaccurate response was unintentional and not motivated by any desire to misrepresent SSI's officers' qualifications to run a CLEC, an IXC or an AAV company. Mr. Woods greatly regrets any concern this matter has caused.

In an effort to resolve this matter, without admitting any intentional misrepresentation on Mr. Woods' part, Southeastern Services, Inc. hereby offers to make a \$2,500 contribution to the General Revenue Fund. It is SSI's sincere hope that this offer will be satisfactory to the Florida Public Service Commission and that this matter will be considered resolved. Please call me at (850) 656-2288 if you have any questions or concerns. Thank you.

Sincered anne Fannon Summerlin

SFS/sbh

Attachment (Certificate of Restoration of Civil Rights)

cc: Ms. Beth Salak, Division Director, Competitive Services

Beth Keating, Esq., Attorney Supervisor Mr. Ray Kennedy, Regulatory Analyst Mr. Dale R. Buys, Regulatory Analyst .05/02/05 07:23 FAX 904 259 7606

SETEL SSI

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Docket No. 050363-TP

Date: June 23, 2005



OFFICE OF EXECUTIVE CLEMENCY Tallahassee, Florida

CERTIFICATE OF RESTORATION OF CIVIL RIGHTS

WHEREAS, the Governor with the concurrence of the requisite members of the Cabinet of the State of Florida have filed an Executive Order on <u>November 19, 1981</u>, with the Secretary of the State, in compliance with Article IV, Section 8, Constitution of the State of Florida, which grants,

MARCUS WOODS

restoration of civil rights, except the specific authority to possess or own a firearm for any and all felony convictions in the state of Florida and/or restoration of civil rights in the State of Florida for any and all felony convictions in any state other than Florida, or in any United States court or military court for which this person has been duly discharged from imprisonment and/or parole, adult community control or probation, and for which this person has not been heretofore granted clemency.

NOW, THEREFORE, I, the Coordinator of the Office of Executive Clemency, pursuant to said Order, and by virtue of the authority vested in me by the Governor with the concurrence of the requisite members of the Cabinet of the State of Florida, do hereby issue this certificate to

MARCUS WOODS

EO #81C-68 DOB: -05/29/51

and the same shall be evidence to all persons that this person is restored to all civil rights in this State, except the specific authority to possess or own a firearm, lost by reason of any and all felonies this person may have been convicted of in the State of Florida and/or any felony conviction in another state, federal, or military court.

Dated this 18th day of April, A.D., 2005

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Attachment B

Docket No. 050363-TP Date: June 23, 2005

LAW OFFICES OF SUZANNE FANNON SUMMERLIN, P.A.

2536 CAPITAL MEDICAL BOULEVARD TALLAHASSEE, FLORIDA 32309 TELEPHONE (850) 656-2288 TELECOPIER (850) 656-5589

June 6, 2005

Mr. Dale Buys, Regulatory Analyst Mr. Ray Kennedy, Regulatory Analyst Lee Fordham, Esq., Assistant General Counsel Florida Public Service Commission Capital Circle Office Center 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850

> RE: Docket No. 050363-TP – 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.

Dear Gentlemen:

Enclosed please find amended answers to Question 15(A) on Southeastern Services, Inc.'s ("SSI's") Competitive Local Exchange Company ("CLEC") certificate application, Question 18(A) on SSI's Alternative Access Vendor ("AAV") certificate application, and Question 20(A) on SSI's Interexchange Carrier ("IXC") certificate application. These amended answers provide an accurate response with accompanying explanation.

SSI submits these amended answers in an effort to resolve this matter, without admitting any intentional misrepresentation on Mr. Woods' part, in addition to SSI's previous offer of a \$2,500 contribution to the General Revenue Fund. It is SSI's sincere hope that this offer will be satisfactory to the Florida Public Service Commission and that this matter will be considered resolved. Please call me at (850) 656-2288 if you have any questions or concerns. Thank you.

Sinderely, Suzanne Fannon Summerlin

SFS/sbh cc: Mr. Mark Woods Docket No. 050363-TP

Date: June 23, 2005

	cket No. 0 te: June 23	950363-TP 3, 2005 -	CLEC	CERTIFICATE Attachment/BATTC	N
	(2)		ecretary of State	e fictitious name registration number:	
11.	lf a limit	ed liability parti	nership, provide	proof of registration to operate in Florida:	
	(a)		-	e registration number:	
12. ,	<u>If a parti</u> partners	<u>nership,</u> provide hip agreement.	e name, title and	address of all partners and a copy of the	
	Name:				
	Title:				
	Address:				
	City/Sta	· .	•		
	Telepho	one No.:	· · · · · · · · · · · · · · · · · · ·	Fax No.:	
	Internet	E-Mail Address	5:		
	internet	Website Addre	ss:		
13.	limited	partnership stat	tute (Chapter 62)	de proof of compliance with the foreign 0.169, FS), if applicable.	
		_	stration number		
14.	Provid	e <u>F.E.I. Number</u>	(if applicable):	59-3191884	
15.	Indicate if any of the officers, directors, or any of the ten largest stockholders have previously been:				
	(a) adj crime, <u>explar</u>	or whether such	, mentally incom actions may res	petent, or found guilty of any felony or of any sult from pending proceedings. <u>Provide</u>	
	-No-	* PLEASE SE	E AMENDED	ANSWER 15(a) DATED JUNE 3, 200)5
Re	quired by C	MU & (11/95) ommission Rule Nos 1 25-24.815	. 25-24.805, Page 3 - 10 -	ON ATTACHMENT A HERETC	5

ATTACHMENT A

PURSUANT TO DOCKET NO. 050363-TP, THE ANSWER TO QUESTION 15(A) ON THIS CLEC CERTIFICATE APPLICATION IS HEREBY AMENDED THIS 3RD DAY OF JUNE, 2005, AS FOLLOWS:

Yes. Mr. Mark Woods, President of Southeastern Services, Inc. was convicted of a felony charge of grand theft of approximately \$8,000 in 1979 in connection with his first business enterprise, an employment agency. Mr. Woods pled "no contest" to the charge because he did not have the appropriate bookkeeping records and documentation to defend himself against the charge. Mr. Woods was quite young; he had limited business experience, and few resources. Mr. Woods went on to become a respected businessman in his community of Macclenny, Florida. Mr. Woods has also been pastor of a church for the past twenty years.

Mr. Woods did not respond to Question 15(a) in the affirmative on the original application because he believed he was legally entitled to respond in the negative to this question. Mr. Woods' belief was based on his good faith understanding that he had "cleared" his record in November 1981 when his counsel at that time informed him that he had received a Certificate of Restoration of Civil Rights. Pursuant to the Florida Public Service Commission's opening of Docket No. 050363-TP regarding the accuracy of Mr. Woods' response to this question on the initial application, Mr. Woods is submitting this amended answer to clarify the circumstances surrounding this matter.

AFFIDAVIT

By my signature below, I, MARK WOODS, President of Southeastern Services, Inc., attest to the accuracy of the information contained in this Amended Answer to Question 15(a), and all other information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide alternative local exchange company service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."

MARK WOODS, President, Southeastern Services, Inc. 1165 South Sixth Street, Macclenny, Florida 32063 (904) 259-1300

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Docket No. 050363-TP Date: June 23, 2005

AAY CERTIFICATE APPLICATION

(d) has been denied authority to operate as an Alternative Access Vendor and the circumstances involved.

NONC

(e) has had regulatory penalties imposed for violations of telecommunications statutes and the circumstances involved.

has been involved in civil court proceedings with an interexchange (f) carrier, local exchange company or other telecommunications entity, and the circumstances involved.

NONE

Indicate if any of the officers, directors, or any of the ten largest stockholders 18. have previously been:

> (a) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. If so, provide explanation.

> > wower * PLEASE SEE AMENDED ANSWER 18(a)

DATED JUNE 3, 2005 ON ATTACHMENT A HERETO

(b) an officer, director, partner or stockholder in any other Florida certificated telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

NONE

FORM PSC/CMU 43 (1/95) Required by Commission Rule Nos. 25.24:715. 15-24.720 and 25-24.730

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ATTACHMENT A

PURSUANT TO DOCKET NO. 050363-TP, THE ANSWER TO QUESTION 18(A) ON THIS AAV CERTIFICATE APPLICATION IS HEREBY AMENDED THIS 3RD DAY OF JUNE, 2005, AS FOLLOWS:

Yes. Mr. Mark Woods, President of Southeastern Services, Inc. was convicted of a felony charge of grand theft of approximately \$8,000 in 1979 in connection with his first business enterprise, an employment agency. Mr. Woods pled "no contest" to the charge because he did not have the appropriate bookkeeping records and documentation to defend himself against the charge. Mr. Woods was quite young; he had limited business experience, and few resources. Mr. Woods went on to become a respected businessman in his community of Macclenny, Florida. Mr. Woods has also been pastor of a church for the past twenty years.

Mr. Woods did not respond to Question 18(a) in the affirmative on the original application because he believed he was legally entitled to respond in the negative to this question. Mr. Woods' belief was based on his good faith understanding that he had "cleared" his record in November 1981 when his counsel at that time informed him that he had received a Certificate of Restoration of Civil Rights. Pursuant to the Florida Public Service Commission's opening of Docket No. 050363-TP regarding the accuracy of Mr. Woods' response to this question on the initial application, Mr. Woods is submitting this amended answer to clarify the circumstances surrounding this matter.

<u>AFFIDAVIT</u>

By my signature below, I, MARK WOODS, President of Southeastern Services, Inc., attest to the accuracy of the information contained in this Amended Answer to Question 18(a), and all other information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide alternative access vendor service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."

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MARK WOODS, President, Southeastern Services, Inc. 1165 South Sixth Street, Macclenny, Florida 32063 (904) 259-1300

Docket No. 050363-TP
Date: June 23, 2005

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IXC CERTIFICATE APAttachment DON

20. Indicate if any of the officers, directors, or any of the ten largest stockholders have previously been:

(a) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. If so, <u>please</u> explain.

+ PLEASE SEE AMENDED ANSWER 20(a)

DATED JUNE 3, 2005 ON ATTACHMENT A HERETO

(b) an officer, director, partner or stockholder in any other Florida certificated telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

NONE The applicant will provide the following interexchange carrier services $\sqrt{}$ (check all that apply): a. ____ MTS with distance sensitive per minute rates _ Method of access is FGA Method of access is FGB _ Method of access is FGD Method of access is 800 MTS with route specific rates per minute ___ Method of access is FGA _ Method of access is FGE Method of access is FGD Method of access is 800

FORM PSC/CMU 31 (12/96) Required by Commission Rule Nos. 25.24-470, 25-24.471, and 25-24.473, 25-24.480(2).

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ATTACHMENT A

PURSUANT TO DOCKET NO. 050363-TP, THE ANSWER TO QUESTION 20(A) ON THIS IXC CERTIFICATE APPLICATION IS HEREBY AMENDED THIS 3RD DAY OF JUNE, 2005, AS FOLLOWS:

Yes. Mr. Mark Woods, President of Southeastern Services, Inc. was convicted of a felony charge of grand theft of approximately \$8,000 in 1979 in connection with his first business enterprise, an employment agency. Mr. Woods pled "no contest" to the charge because he did not have the appropriate bookkeeping records and documentation to defend himself against the charge. Mr. Woods was quite young; he had limited business experience, and few resources. Mr. Woods went on to become a respected businessman in his community of Macclenny, Florida. Mr. Woods has also been pastor of a church for the past twenty years.

Mr. Woods did not respond to Question 20(a) in the affirmative on the original application because he believed he was legally entitled to respond in the negative to this question. Mr. Woods' belief was based on his good faith understanding that he had "cleared" his record in November 1981 when his counsel at that time informed him that he had received a Certificate of Restoration of Civil Rights. Pursuant to the Florida Public Service Commission's opening of Docket No. 050363-TP regarding the accuracy of Mr. Woods' response to this question on the initial application, Mr. Woods is submitting this amended answer to clarify the circumstances surrounding this matter.

AFFIDAVIT

By my signature below, I, MARK WOODS, President of Southeastern Services, Inc., attest to the accuracy of the information contained in this Amended Answer to Question 20(a), and all other information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide interexchange company service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."

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MARK WOODS, President, Southeastern Services, Inc. 1165 South Sixth Street, Macclenny, Florida 32063 (904) 259-1300