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September 12, 2005

Ms. Blanca S. Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY
RECEIVED - FPSC
SEP 12 PM 12:33
COMMISSION
CLERK

Re: Docket No. 050363-TP

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket on behalf of Northeast Florida Telephone Company ("Northeast Florida") are the following documents:

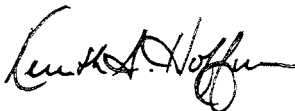
1. Original and fifteen copies of Northeast Florida's Response in Opposition to Southeastern Services, Inc.'s Motion to Dismiss Northeast Florida Telephone Company's Protest of Proposed Agency Action Order and Petition for Formal Administrative Hearing; and
2. Original and fifteen copies of Northeast Florida's Request for Oral Argument.

CMP _____
COM _____
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OTH _____

Please acknowledge receipt of these documents by stamping the extra copy of this letter filed and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman

KAH/rl
Enclosures
NFTC\bayo.september12ltr

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A.V.N.
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(1)	DOCUMENT NUMBER-DATE	(2)	DOCUMENT NUMBER-DATE
	08632 SEP 12 05		08633 SEP 12 05
	FPSC-COMMISSION CLERK		FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Southeastern)
Services, Inc. for apparent failure to disclose) Docket No. 050363-TP
required information on each of its applications)
for alternative access vendor certificate,)
competitive local exchange company certificate,) Filed: September 12, 2005
and interexchange company certificate.)
_____)

**NORTHEAST FLORIDA TELEPHONE COMPANY'S
RESPONSE IN OPPOSITION TO SOUTHEASTERN SERVICES, INC.'S
MOTION TO DISMISS NORTHEAST FLORIDA TELEPHONE
COMPANY'S PROTEST OF PROPOSED AGENCY ACTION ORDER
AND PETITION FOR FORMAL ADMINISTRATIVE HEARING**

Northeast Florida Telephone Company ("Northeast Florida"), by and through its undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code, hereby files this Response in Opposition to Southeastern Services, Inc.'s ("SSI") Motion to Dismiss Northeast Florida's Protest of Proposed Agency Action Order and Petition for Formal Administrative Hearing. In support thereof, Northeast Florida states as follows:

A. BACKGROUND

1. Docket No. 050363-TP was opened by the Florida Public Service Commission ("Commission") to investigate the repeated misrepresentations of SSI and its president, Mark Woods, in sworn affidavits filed in support of applications for certificates of public convenience and necessity with the Commission. Specifically, on three separate occasions, Mr. Woods swore under oath that he had not been previously found guilty of any felony or of any crime in each of SSI's applications for an alternative access vendor ("AAV") certificate, competitive local exchange company ("CLEC") certificate, and interexchange company ("IXC") certificate. The affidavit form

DOCUMENT NUMBER-DATE

08632 SEP 12 05

FPSC-COMMISSION CLERK

for each of the applications expressly states in bold print that “[w]hoever 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...” Contrary to his repeated sworn statements, Mr. Woods had been adjudicated guilty of the felony crime of grand theft on December 4, 1979, prior to the submission of the above-referenced applications and sworn affidavits.

2. On June 7, 2005, SSI submitted amendments to each of its original applications for AAV, CLEC, and IXC certificates providing Mr. Woods’ explanation for his repeated failure to disclose his prior felony conviction to the Commission. On July 8, 2005, the Commission issued Order No. PSC-05-0734-PAA-TP (“PAA Order”) accepting an offer of settlement made by SSI to voluntarily contribute \$2,500 to the Florida General Revenue Fund and also approving each of SSI’s amended applications.

3. On August 2, 2005, Northeast Florida timely filed its Petition protesting the PAA Order and seeking a formal administrative hearing pursuant to Section 120.57, Florida Statutes. Through its Protest Petition, Northeast Florida is requesting that the Commission conduct a formal administrative hearing on SSI’s amended applications for AAV, CLEC, and IXC certificates and enter a final order which addresses SSI’s amended applications, consistent with the Commission’s jurisdiction and the public interest.

4. On August 29, 2005, SSI filed its Motion to Dismiss Northeast Florida’s Protest Petition arguing that Northeast Florida has no standing to file a protest to the Commission’s PAA Order, that the disputed issues of material fact identified in Northeast Florida’s Protest Petition are either not in dispute or are outside the scope of this docket, and that it is inappropriate to permit a competitor to participate in an enforcement proceeding. SSI also alleges that Northeast Florida’s

Protest Petition is merely an attempt to have the Commission address certain “policy issues” that are currently being litigated in a circuit court proceeding.

5. As the arguments set forth below demonstrate, Northeast Florida’s Protest Petition properly alleges that Northeast Florida’s substantial interests are affected by the Commission’s proposed agency action to approve SSI’s amended applications for AAV, CLEC, and IXC certificates, thereby establishing that Northeast Florida has standing to participate in this proceeding. **That is the only relevant issue raised by SSI’s Motion to Dismiss.** Northeast Florida adds, however, that the disputed issues of material facts alleged in its Protest Petition are specifically within the scope of the criteria for amendments to original applications under Sections 364.335 and 364.337, Florida Statutes. The Commission should deny SSI’s Motion to Dismiss and conduct a formal administrative proceeding on SSI’s amended applications for CLEC, AAV and IXC certificates.

B. ARGUMENT

1. Northeast Florida has Standing as an Entity whose Substantial Interests are Affected by the Commission’s Proposed Agency Action

6. Each of SSI’s amended applications is subject to full Commission review to determine whether SSI meets the statutory criteria to amend and/or maintain its certificates. Section 364.335(2) and (3), Florida Statutes, confirms that if the Commission grants a requested certificate in response to an “application or amendments thereto,” any person who would be substantially affected by the requested certification may, within 21 days after the granting of such a certificate, file a written objection requesting a proceeding pursuant to Sections 120.569 and 120.57, Florida Statutes.

7. In its Motion to Dismiss, SSI states that Northeast Florida does not have standing to file a protest of the Commission's PAA Order. However, SSI offers very little in the way of support for this argument, citing only to Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2nd DCA 1981), and stating that "this proceeding was not intended to address Northeast Florida's purported 'injury' regarding SSI's nonpayment of access charges on SSI's provision of VoIP services." (SSI Motion to Dismiss at pp. 5-6, par. 13). Presumably, SSI is referring to litigation pending in circuit court in Baker County where Northeast Florida is pursuing recovery of payment from SSI for originating access charges based on causes of action for, among other things, fraud and deceit. SSI's contention highlights its misunderstanding of the issues raised by Northeast Florida's Protest Petition and the Commission's jurisdiction in this matter. Northeast Florida's Protest Petition is not seeking recovery of these access charges. That remedy is being pursued in circuit court. The relevance of the allegations regarding SSI's failure to pay access charges and the alleged fraudulent conduct of SSI is tied to the review the Commission must undertake in this docket regarding SSI's technical, financial and managerial fitness to provide service.

8. Northeast Florida's Protest Petition sets forth the requisite allegations demonstrating that it has standing to challenge the Commission's proposed agency action to approve SSI's amended applications under Agrico which established that in order for a party to have a "substantial interest" in the outcome of the proceeding, the party must show that: 1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Chapter 120.57, Florida Statutes hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Agrico at 482.

9. As alleged in Northeast Florida's Protest Petition, each of SSI's amended applications

are subject to full Commission review to determine whether the applications meet the requirements of Section 364.337, Florida Statutes, which require an applicant to demonstrate that it has the “sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.” SSI’s lack of managerial capability has been revealed by the various acts and omissions alleged in Northeast Florida’s Protest Petition. These acts include SSI’s failure to disclose the felony conviction information to the Commission in its applications for CLEC, AAV and IXC certificates; SSI’s failure to report revenues and pay appropriate amounts of Regulatory Assessment Fees (“RAFs”); and SSI’s failure to timely apply for and obtain an IXC certificate prior to its advertising and providing long-distance services. Questions regarding SSI’s financial capability to provide service have similarly been raised by Northeast Florida’s Protest Petition.

10. The injury in fact which Northeast Florida stands to suffer as a result of the Commission’s consideration of SSI’s amended applications, its technical, financial and managerial ability to provide service, and SSI’s repeated transgressions in its conduct and relationships with Northeast Florida and the Commission directly and substantially affect: (a) Northeast Florida’s status, rights, and obligations under its Resale Agreement with SSI and potential resulting impacts on customers of Northeast Florida and SSI; and (b) Northeast Florida’s ability to compete with SSI in the provision of basic local telecommunications services in the Baker County area. Moreover, as the carrier of last resort in the Baker County area and because Northeast Florida could potentially be obligated to provide service to SSI’s customers, Northeast Florida’s interests are substantially affected by the outcome of the Commission’s proposed agency action.

11. This proceeding is the type of proceeding designed to protect Northeast Florida’s substantial interests. This proceeding focuses on amendments to three applications for certificates.

Any and all issues concerning applicant SSI's technical, financial and managerial ability to provide service and the appropriate resolution of the status of these certificates and appropriate sanctions to be imposed on are the types of issues to be resolved in this proceeding.

2. The Disputed Issues of Material Fact Raised by Northeast Florida's Protest Petition are Properly within the Scope of the Criteria for Amendments to Original Applications

12. In its Motion to Dismiss, SSI states that the disputed issues of material fact raised by Northeast Florida in its Protest Petition are either not in dispute or are outside the scope of this docket. The merits of the factual issues raised by Northeast Florida in its Protest Petition are not relevant to and provide no legal basis for dismissal of Northeast Florida's Protest Petition. Nonetheless, Northeast Florida will address SSI's contentions regarding the disputed issues of material facts raised in Northeast Florida's Protest Petition. Northeast Florida's allegations are relevant to and within the scope of the criteria for amendments to original applications under Section 364.337, Florida Statutes, and other applicable statutes and rules.

a. Section 364.335(1)(a), Florida Statutes, provides that each applicant for a certificate shall provide all information which may include a detailed inquiry into the ability of the applicant to provide service and a detailed inquiry into the territory and facilities involved. Further, Section 364.337(1) and (3), Florida Statutes, provide that the Commission shall grant a certificate of authority to provide competitive local exchange service and intrastate interexchange service 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. Accordingly, disputed issues of material fact "a", "b" and "c" contained in Northeast Florida's Protest Petition raise the issue of whether each of SSI's amended applications for AAV, CLEC, and IXC certificates demonstrate that SSI has the

technical, financial, and managerial capability to provide service. These issues are relevant to and within the scope of the criteria for amendments to original applications under the applicable statutory provisions of Chapter 364, Florida Statutes and provisions of the Florida Administrative Code.

b. Disputed issue of material fact “d” contained in Northeast Florida’s Protest Petition raises the issue of whether Mr. Woods knew or reasonably should have known that he had been convicted of the felony of grand theft each time he signed a sworn affidavit denying such conviction at the time SSI filed its original applications for its CLEC, AAV, and IXC certificates. This issue is within the scope of the criteria for amendments to original applications because it goes to the lack of managerial capability that has been revealed by the repeated sworn misrepresentations of SSI’s president.

c. Similarly, disputed issues of material fact “e” and “f” are relevant to SSI’s amended applications because they address SSI’s lack of managerial capability to provide service. These issues address whether SSI failed to apply for and obtain a certificate to operate as an IXC prior to providing its long distance service for the years 2000 and January through December 27, 2001, and whether SSI failed to report intrastate interexchange telecommunications services revenues in its RAFs returns for its IXC certificate filed with the Commission. These deliberate acts and omissions raised by Northeast Florida call into question SSI’s managerial capability to provide service in the geographic areas proposed to be served through its amended applications and are accordingly within the scope of the criteria for amendments to original applications.¹

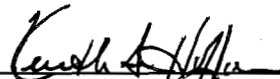
¹ These issues are not, as SSI alleges, “policy issues” being litigated in circuit court in Baker County, but rather go to the SSI’s managerial capability. SSI’s arguments with respect to these disputed issues of material fact once again highlight its misunderstanding of the issues raised by Northeast Florida’s Protest Petition and the Commission’s jurisdiction in this matter.

d. Disputed issue of material fact “g” contained in Northeast Florida’s Protest Petition raises the issue of whether granting the amended applications is consistent with the public interest. Rules 25-24.471 and 25-24.720, Florida Administrative Code, set forth the requirements for an applicant to receive a certificate to provide service as an IXC and AAV provider. Subsection (3) of each of those rules provide that a certificate will be granted if the Commission determines that such approval is in the public interest.

e. Disputed issue of material fact “h” raises the issue of the appropriate action the Commission should take with respect to SSI’s amended applications. In considering SSI’s amended applications, the Commission must determine whether SSI’s certificates should be maintained, canceled or suspended, whether terms and conditions should be attached to SSI’s certificates, and/or whether to impose additional penalties or fines on SSI. In addition, in any action initiated by the Commission where revocation or suspension of a certificate is a potential outcome, the Commission is required to furnish notice to the appropriate local government and to the Office of Public Counsel under Section 364.335(4), Florida Statutes.

WHEREFORE, Northeast Florida Telephone Company respectfully requests that the Commission deny SSI’s Motion to Dismiss Northeast Florida’s Petition and conduct a formal administrative proceeding on SSI’s amended applications for CLEC, AAV and IXC certificates as described above and enter a final order addressing SSI’s amended applications, consistent with the Commission’s jurisdiction and the public interest.

Respectfully submitted,



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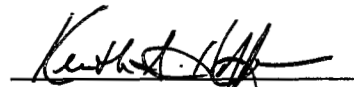
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States Mail this 12th day of September, 2005 to:

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