

BEFORE THE PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 050363-TP
ORDER NO. PSC-05-0944-PCO-TP
ISSUED: September 27, 2005

ORDER GRANTING SSI'S MOTION TO ACCEPT LATE-FILED
MOTION TO DISMISS NEFCOM'S PROTEST

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy and inexpensive determination of all aspects of the case.

Case Background

On June 16, 1999, Southeastern Services, Inc. (SSI) was granted a certificate of public convenience and necessity (certificate) to provide Competitive Local Exchange Company (CLEC) services (Certificate No. 7018), and on March 23, 2001, a certificate to provide Alternative Access Vendor (AAV) services (Certificate No. 7767). On December 28, 2001, SSI was granted a certificate to provide Interexchange Company (IXC) services (Certificate No. 7988).

On March 31, 2005, Northeast Florida Telephone Company (NEFCOM) submitted a letter 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 we conduct an investigation into the matter. Thereafter, our staff conducted an investigation and determined that SSI did not disclose the information as required on the AAV, CLEC, and IXC certificate application forms. We 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.

On May 19, 2005, SSI submitted a letter, dated May 4, 2005, in which the company explained the circumstances of Mr. Woods' felony adjudication and offered to make a \$2,500 contribution to the Florida General Revenue Fund to settle the matter. On June 7, 2005, SSI submitted a letter in which the company provided amendments to the company's original applications addressing Mr. Wood's felony adjudication.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

On July 8, 2005, PAA Order No. PSC-05-0734-PAA-TP was issued, accepting SSI's settlement offer and requiring the correction of the referenced applications. On August 2, 2005, NEFCOM filed its Protest of PAA Order No. PSC-05-0734-PAA-TP and Petition for formal administrative hearing.

On August 30, 2005, SSI filed its Motion to Dismiss NEFCOM's Protest, and, also, a Motion to Accept Late-Filed Motion to Dismiss. SSI states that its Motion to Dismiss NEFCOM's Protest was filed in the Commission Clerk's drop box six minutes late, due to a mechanical malfunction with SSI's office equipment. SSI further alleged that no prejudice occurred to any party as a result of the filing six minutes late. No objection to the late filing has been filed.

Argument

Counsel for SSI states that she was aware that the last day for filing the Motion to Dismiss was August 29, 2005. However, due to a malfunction in her office copier equipment, the filing was delivered to the Commission Clerk's drop box at 5:06pm on August 29, 2005, six minutes late. SSI argues that no party would be prejudiced by the granting of this Motion.


Decision

Upon consideration, I find that the late filing was a result of an unexpected mechanical failure, and created no hardship on NEFCOM or this Commission. Additionally, I note that NEFCOM has filed no response to SSI's Motion to Accept Late Filed Motion to Dismiss. Therefore, it appears the granting of SSI's Motion would not prejudice any party. Accordingly, SSI's Motion to Accept Late Filed Motion to Dismiss NEFCOM's Protest is granted.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Southeastern Services, Inc.'s Motion to Accept Late-Filed Motion to Dismiss NEFCOM's Protest is hereby granted

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 27th day of September, 2005.


J. TERRY DEASON
Commissioner and Prehearing Officer

(SEAL)

LF

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.