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November 16, 2005

HAND DELIVERY

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 050363-TP

Dear Ms. Bayó:

Enclosed herewith for filing in the above-referenced docket on behalf of Northeast Florida Telephone Company ("Northeast Florida") are the original and one copy of Northeast Florida's Notice of Administrative Appeal.

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

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CTR _____
ECR _____
GCL _____ KAH/rl
OPC _____ Enclosures
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SCR _____
SGA _____
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BEFORE THE FLORIDA 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
	)	Filed: November 16, 2005

NORTHEAST FLORIDA TELEPHONE COMPANY'S
NOTICE OF ADMINISTRATIVE APPEAL

NOTICE IS GIVEN that Northeast Florida Telephone Company ("Northeast Florida") appeals to the Florida Supreme Court the Order of the Florida Public Service Commission rendered October 20, 2005 in the above-referenced docket. The Order granted Southeastern Services, Inc.'s ("SSI") Motion to Dismiss the Petition filed by Northeast Florida protesting proposed agency action of the Florida Public Service Commission approving: (1) a payment offered by SSI to settle Commission action taken in response to SSI's failure to disclose the prior felony conviction of its president in three applications for certificates to provide various types of telecommunications services; and (2) SSI's amended applications to operate in Florida as a competitive local exchange company, interexchange company, and alternative access vendor. A true and correct copy of said Order is attached hereto.

Respectfully submitted this 16th day of November, 2005.

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Attorneys for Northeast Florida Telephone Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States Mail this 16th day of November, 2005 to:

C. Lee Fordham, Esq.
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Suzanne Fannon Summerlin, Esq.
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2536 Capital Medical Boulevard
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Kenneth A. Hoffman, Esq.

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-05-1027-FOF-TP ISSUED: October 20, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH RUDY BRADLEY
LISA POLAK EDGAR

ORDER GRANTING MOTION TO DISMISS PROTEST

BY THE COMMISSION:

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

On 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 this Commission conduct an investigation into the matter. From April 1, 2005 through April 29, 2005, our 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. 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 4, 2005, SSI submitted a letter in which the company explained the circumstances of Mr. Woods felony adjudication. Thereafter, on May 19, 2005, SSI offered to make a $2,500 contribution to the Florida General Revenue Fund to settle the matter.

Additionally, 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.

Proposed Agency Action Order No. PSC-05-0734-PAA-TP was issued on July 8, 2005, accepting the settlement offered by SSI. However, on August 2, 2005, NEFCOM filed its Protest of that Order. On August 30, 2005, SSI filed its Motion to Dismiss NEFCOM s Protest, and on September 12, 2005, NEFCOM filed its Response to SSI s Motion to Dismiss and Request for Oral Argument.

SSI s Position

SSI argues that this Commission should dismiss NEFCOM s protest because NEFCOM has no standing to file a protest of this PAA Order. Also, according to SSI, the so-called disputed issues of material fact NEFCOM identifies in its protest are either not in dispute or are outside the scope of this docket. Additionally, SSI claims, it is inappropriate to permit a competitor to participate in an enforcement proceeding.

SSI urges that NEFCOM s protest of this Commission s order accepting SSI s offer of settlement in the instant Docket is an attempt, pure and simple, to destroy SSI as a competitor by having SSI s certificates cancelled or suspended, as well as means to improperly shoe-horn policy issues regarding the provision of VoIP services into an enforcement docket.

According to SSI, as a competitor with a purely economic interest in seeing SSI lose its Certificates, NEFCOM has no standing to represent the public or to participate in this matter, and offers no information relevant to our decision on these issues. SSI claims that Agrico Chemical Company v. Department of Environmental Protection, 406 So.2d 478 (2nd DCA 1981) is dispositive of this issue. SSI argues that it is clear that the only interest NEFCOM represents is that of a competitor who believes its profit and loss statement may be affected by SSI s continued existence and operation in NEFCOM s territory. By writing a letter to inform the Commission regarding Mr. Woods inadvertent error on SSI s application forms, NEFCOM launched yet another attack against SSI in its attempt to destroy the Company for the sole purpose of eliminating its only competitor. According to SSI, Agrico just does not confer standing for that purpose. Simply put, NEFCOM does not have standing to intervene in this matter, nor does NEFCOM, in any way, shape or form, represent the public s interest in this matter. Accordingly, SSI argues that NEFCOM s Protest should be dismissed.

NEFCOM s Position

In response, NEFCOM states that its Protest properly alleges that its substantial interests are affected by our proposed agency action to approve SSI s amended applications for AAV, CLEC, and IXC certificates, thereby establishing that NEFCOM has standing to participate in this proceeding. NEFCOM notes that is the only relevant issue raised by SSI s Motion to Dismiss. NEFCOM adds, however, that the disputed issues of material fact alleged in its Protest are specifically within the scope of the criteria to be considered for amendments to original applications under Sections 364.335 and 364.337, Florida Statutes.

NEFCOM argues that it has standing as an entity whose substantial interests are affected by the Commission s Proposed Agency Action, because 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 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.

NEFCOM claims SSI offers very little in the way of support for its argument, citing only to Agrico and stating that this proceeding was not intended to address NEFCOM s purported injury regarding SSI s nonpayment of access charges on SSI s provision of VoIP services. According to NEFCOM, SSI s contention highlights its misunderstanding of the issues raised by NEFCOM s Protest and the Commission s jurisdiction in this matter. NEFCOM maintains it is not seeking recovery of access charges, noting that remedy is being pursued in circuit court. Rather, NEFCOM urges 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 this Commission must undertake in this docket regarding SSI s technical, financial and managerial fitness to provide service.

NEFCOM argues that its Protest 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. As alleged in NEFCOM s Protest, 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. This provision requires 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. NEFCOM alleges SSI s lack of managerial capability has been revealed by the various acts and omissions alleged in NEFCOM s Protest. These acts include: (1) SSI s failure to disclose the felony conviction information to the Commission in its applications for CLEC, AAV and IXC certificates; (2) SSI s failure to report revenues and pay appropriate amounts of Regulatory Assessment Fees (RAFs); and (3) 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 NEFCOM s Protest.

NEFCOM claims the injuries that it stands to suffer as a result of the approval of SSI s amended applications pertaining to: (1) NEFCOM s status, rights, and obligations under its Resale Agreement with SSI and potential resulting impacts on customers of NEFCOM and SSI; and (2) NEFCOM s ability to compete with SSI in the provision of basic local telecommunications services in the Baker County area. Moreover, urges NEFCOM, as the carrier of last resort in the Baker County area, and a potential service provider to SSI s

customers, NEFCOM s interests are substantially affected by the outcome of the Commission s Proposed Agency Action. Additionally, this proceeding is the type of proceeding designed to protect NEFCOM s substantial interests. Accordingly, NEFCOM requests that the Commission deny SSI s Motion to Dismiss NEFCOM s Petition and conduct a formal administrative proceeding on SSI s amended applications for CLEC, AAV and IXC certificates.

Discussion

Though there is considerable discussion in the pleadings of both parties on matters other than standing, we believe standing to be both the threshold and dispositive issue for consideration in this proceeding. The controlling case for determining standing remains Agrico Chemical Co. v Dept. of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981). According to the Agrico test, a party must show: (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing; and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Id. at 482. NEFCOM has not alleged any direct injury that it will, in fact, incur by virtue of this Commission allowing the amendment of SSI s existing certificates. Instead, NEFCOM argues potential and speculative injury, based on the alleged lack of competence of SSI. Thus, in order to preclude possible future injury resulting from its dealings with such a company, NEFCOM is urging that the amended certificates be disallowed. Furthermore, it is alleging potential competitive harm in that it will have to continue to compete with SSI.

Conjecture about future economic detriment is too remote to establish standing. Commission Order No. PSC-98-0702-FOF-TP, issued May 20, 1998, at p. 15, citing Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997) (threatened viability of plant and possible relocation do not constitute injury in fact of sufficient immediacy to warrant a Section 120.57, Florida Statutes hearing); citing Florida Society of Ophthalmology v. State Board of Optometry, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988)(some degree of loss due to economic competition is not of sufficient immediacy to establish standing). See also Order No. PSC-96-0755-FOF-EU; citing Order No. PSC-95-0348-FOF-GU, March 13, 1995; International Jai-Alai Players Assoc. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, at 1225-1226 (Fla. 3rd DCA 1990); and Village Park Mobile Home Association, Inc. v. State, Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. denied, 513 So. 2d 1063 (Fla. 1987)(speculations on the possible occurrence of injurious events are too remote to warrant inclusion in the administrative review process). Therefore, we find that NEFCOM fails to meet the standing criteria established by prong one of Agrico.

Though NEFCOM s Response references proceedings under both Sections 364.335 and 364.337, Florida Statutes, Section 364.335 is not, in any way, applicable to the discussion of the present issue. Only Section 364.337, F.S., contains the applicable criteria, as well as the standard of review, for the subject certificates. This provision does not appear to contemplate consideration of the type of intercarrier and competitive issues raised by NEFCOM. Thus, arguably, NEFCOM also fails the second prong of the Agrico test. Again, the Agrico test requires that both prongs be met. Thus, failure of either prong is sufficient to deny standing.

Decision

Accordingly, NEFCOM s concerns regarding the future relationship between itself and SSI do not establish NEFCOM s standing to seek relief through this proceeding. Therefore, we grant SSI s Motion to Dismiss Protest, because NEFCOM has failed to demonstrate standing by not identifying certain specific injuries it would suffer as a result of the granting of SSI s amended applications. Additionally, Order No. PSC-05-0734-PAA-TP shall be deemed a final order effective as of the date of our vote on this matter.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Southeastern Services, Inc. s Motion to Dismiss Protest is hereby granted. It is further

ORDERED that Proposed Agency Action Order No. PSC-05-0734-PAA-TP shall be deemed a final order effective as of the date of our vote on this matter.

By ORDER of the Florida Public Service Commission this 20th day of October, 2005.

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

By: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

(SEAL)

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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 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.