

State of Florida



Public Service Commission

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DATE: November 22, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (McCoy) *DM*
Office of the General Counsel (McKay) *VSM DL*

RE: Docket No. 050802-TX – Application for certificate to provide competitive local exchange telecommunications service by Inter-Tel NetSolutions, Inc.

AGENDA: 12/06/05 – 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\050802.RCM.DOC

Case Background

This recommendation addresses Inter-Tel NetSolutions, Inc.'s (Inter-Tel) application to obtain a Certificate of Public Convenience and Necessity to operate as a Competitive Local Exchange Telecommunications Company (CLEC) in Florida. Inter-Tel originally obtained authority (Certificate No. 5285) from the Commission to operate as a CLEC on December 17, 1997. In addition, Inter-Tel registered as an intrastate interexchange telecommunications company (IXC) on July 16, 1991, and continues to operate as an IXC in good standing.

Inter-Tel's CLEC Certificate No. 5285 was cancelled by the Commission effective May 30, 2000, in Docket No. 000228-TX, In Re: Initiation of show cause proceedings against Inter-

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Tel NetSolutions, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records.

Docket No. 000228-TX was established as a result of staff sending Inter-Tel a certified letter requesting information necessary for inclusion in the local competition report required of the Commission by Section 364.386, Florida Statutes. On July 6, 1999, Inter-Tel signed for delivery of the letter. Receiving no response, on December 6, 1999, staff sent a second certified letter, requesting a response from Inter-Tel no later than December 22, 1999. The company never responded to staff's multiple inquiries and Docket No. 000228-TX was opened. Order No. PSC-00-0694-SC-TX was issued on April 13, 2000, imposing a \$10,000 penalty upon the company for its apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. The company failed to respond to the Order, hence its CLEC certificate was cancelled.

Inter-Tel has again applied for a CLEC certificate and offers a settlement to rectify matters associated with Docket No. 000228-TX.

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

Discussion of Issues

Issue 1: Should the Commission accept the settlement offer proposed by Inter-Tel NetSolutions, Inc., and grant Inter-Tel NetSolutions, Inc. Certificate No. 8610 to operate as a competitive local exchange telecommunications company in Florida as provided by Section 364.337(1), Florida Statutes?

Recommendation: Yes. The Commission should accept the settlement offer proposed by Inter-Tel NetSolutions, Inc., and grant Inter-Tel NetSolutions, Inc. Certificate No. 8610 to operate as a competitive local exchange telecommunications company in Florida. (McCoy, McKay)

Staff Analysis: Section 364.337(1), Florida Statutes, provides in part:

The commission shall grant a certificate of authority to provide competitive local exchange 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.

As described in the Case Background, Inter-Tel's previous authority to provide CLEC services in Florida was revoked by the Commission in Docket No. 000228-TX. Inter-Tel has submitted an application to once again obtain authority from the Commission to operate as a CLEC in Florida. In an effort to reacquire CLEC authority from the Commission, Inter-Tel proposes a settlement to satisfy the deficiencies detailed in Order No. PSC-00-0694-SC-TX, issued on April 13, 2000.

To summarize, Inter-Tel failed to respond and show cause why it should not be penalized \$10,000 as provided in Order No. PSC-00-0694-SC-TX, and failed to pay the penalty in accordance with the deadline imposed by the Order. To rectify these matters, the company proposes the following:

- Pay \$7,500 as settlement of the total assessed penalty of \$10,000;
- Pay all outstanding regulatory assessment fee statutory late payment charges associated with CLEC Certificate No. 5285; and
- In the future, respond promptly to Commission inquiries and timely pay regulatory assessment fees.

In developing its recommendation, staff considered such factors as management, financial, and technical capability of the applicant. Staff also considered historical information about the company's success and compliance as an actively registered IXC in Florida since 1991.

Regarding the management capability, Inter-Tel's past performance was marginal as evidenced by the fact that its CLEC certificate was previously cancelled. However, the company has demonstrated adequate management capability regarding its IXC operations in Florida. There are no active consumer complaint cases.

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Regarding the company's financial capability, Inter-Tel provided a written statement of its financial capability as part of its CLEC application as well as provided current copies of its quarterly financial statements from its FORM 10-Q publications (requirement of the United States Securities and Exchange Commission). In addition, the company has offered a cash settlement of \$7,500, which the company appears to have the financial resources to pay.

The company's technical capability generally relates to that provided it by the underlying carriers. Thus, staff believes that the company's technical capability is not at risk.

The Commission has approved a similar settlement in Docket No. 001621-TX, In Re: Application for certificate to provide alternative local exchange telecommunications service by Comm South Companies, Inc. d/b/a Florida Comm South. In this instance, the applicant's CLEC certificate was previously cancelled in Docket No. 000230-TX, In Re: Initiation of show cause proceedings against Onyx Distributing Company, Inc. d/b/a Florida Comm South for apparent violation of Section 364.183(1), F.S., Access to Company Records. In Order PSC-01-0477-PAA-TX, issued February 26, 2001, the Commission accepted the company's offer of \$7,500 to settle the unresolved issues for which the company's CLEC certificate was cancelled in Docket No. 000230-TX.

Accordingly, staff recommends that the Commission accept the settlement offer proposed by the company, and grant Inter-Tel NetSolutions, Inc. Certificate No. 8610 to operate as a competitive local exchange telecommunications company in Florida.

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Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and effective, and CLEC Certificate No. 8610 will become active 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. Payment of the voluntary contribution should be made to the Florida Public Service Commission within 30 days after the issuance of the Proposed Agency Action Order, identified by docket number, and subsequently deposited in the General Revenue Fund. This docket should be closed administratively upon receipt of the payment of the voluntary contribution. (McKay)

Staff Analysis: Staff recommends that the Commission take action as set forth in the Recommendation above.