

State of Florida



## Public Service Commission

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

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**DATE:** May 9, 2006  
**TO:** Blanca S. Bayó, Commission Clerk and Administrative Services Director  
**FROM:** Lee Fordham, Senior Attorney, Office of the General Counsel  
**RE:** Docket No. 060296

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The attached letter dated May 5, 2006, from Ken Hoffman, attorney for Northeast Florida Telephone Company, should be placed in and made a part of the docket file for the above referenced docket.

Also, due to an existing disagreement between the parties regarding the wording of the docket title, the title should be changed to track exactly the wording of the referring Order issued by the Circuit Court Judge in and for Baker County, Florida. That wording for the title should be as follows:

Referral by the Circuit Court of Baker County, Florida, to determine whether or not Southeastern Services, Inc. is legally responsible for payment to Northeast Florida Telephone for originating intrastate access charges under Northeast Florida Telephone's Public Service Commission approved tariff for the long distance calls provided by Southeastern Services, Inc. as alleged in the Amended Complaint.

cc: David Dowds  
Pat Lee  
Ken Hoffman  
Suzanne Summerlin  
Lee Fordham  
Adam Teitzman

DOCUMENT NUMBER-DATE

04083 MAY-9 8

FPSC-COMMISSION CLERK

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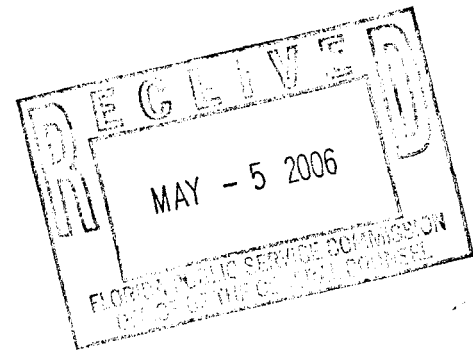
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May 5, 2006

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2540 Shumard Oak Boulevard  
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**HAND DELIVERY**



Re: Docket Nos. 060083-TP and 060296-TP

Dear Messrs. Fordham and Teitzman:

As you know, Staff convened a conference call yesterday afternoon with the parties to discuss the issue of consolidating the above-referenced dockets and scheduling an Issue Identification Conference. During the call, Mr. Fordham referred to the two docket numbers that should be consolidated. That was the first time that I became aware that Docket No. 060296-TP had been opened in connection with the primary jurisdiction referral from the Baker County Circuit Court.

Upon completion of the call, I checked the Commission's website and found that Docket No. 060296-TP had been opened in response to a "Notice of Primary Jurisdiction Referral by Baker County Circuit Court of VOIP Access Charge Issue and Request to Establish New Docket" filed by Ms. Summerlin, SSI's counsel, on March 30, 2006. Ms. Summerlin's certificate of service shows that I was mailed a copy of this Notice. I never received a copy of that Notice and did not have an opportunity to review it until yesterday afternoon following the conference call.

Upon my review of the Notice, I was disappointed to see that SSI appeared to be attempting to gain some sort of advantage by the manner in which SSI described and styled the issue referred by the circuit court. In the title of the Notice, in paragraph 3 of the Notice, and in SSI's style of the case, SSI frames the issue that was referred as whether SSI is liable to Northeast Florida Telephone Company for access charges on the Voice Over Internet Protocol services SSI has provided to its customers. Through the numerous motions to dismiss that SSI unsuccessfully pursued in circuit court, SSI continually referred to its service as a "Voice Over Internet Protocol" service. Northeast Florida consistently challenged that characterization. SSI is well aware of that fact. I anticipate that one of the disputed issues in this case will go to the proper character and classification of SSI's service.

C. Lee Fordham, Esq.  
Adam Teitzman, Esq.  
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I have enclosed a copy of SSI's Notice of Referral which attaches the Court's Order Granting Defendant, Southeastern Services, Inc.'s Motion to Abate. If you look under the pertinent provisions of the Order - - the Ordering provisions - - you will see that the Court framed the issue that it had referred to the Commission as follows:

2. The Florida Public Service Commission is the appropriate regulatory agency to properly address the primary issue under the dispute of these parties i.e., whether or not SOUTHEASTERN SERVICES, INC. is legally responsible for payment to NORTHEAST FLORIDA TELEPHONE COMPANY for originating intrastate access charges under Northeast Florida's Public Service Commission approved tariff for the *long distance calls* provided by SOUTHEASTERN SERVICES, INC. as alleged in the Amended Complaint. This Court shall stay this proceeding and refer this case on primary jurisdiction grounds to the Florida Public Service Commission for the determination of the primary issue underlying the Complaint currently before the Commission and thereby also addressing the legal principle as to the causes of action set forth in the Complaint in this cause of action. (Emphasis supplied).

I would simply ask that the Staff and Commission be mindful that the characterization of SSI's long distance calling service (that SSI marketed to the public as a long distance calling service) is at issue, and that Northeast Florida Telephone Company believes it to be inappropriate to include the term "VOIP" in the case style. Northeast Florida would request that this term be removed from the style of the case so that the case style would read: "Notice of primary jurisdiction referral by Baker County Circuit Court of access charge issue and request to establish new docket."

I would add that during yesterday afternoon's conference call, Ms. Summerlin stated that she was not prepared to address the issue of consolidation as she had no notice that consolidation would be discussed during the call. As it turns out, SSI attempted to preemptively oppose consolidation in paragraph 5 of its Notice of Primary Jurisdiction Referral. During the call, Ms. Summerlin again opposed consolidation but then appeared to retreat from that position toward the conclusion of the call if the Commission would agree to hear SSI's Motion to Dismiss prior to the Issue Identification Conference. While I cannot explain why the issue of consolidation was preemptively raised by SSI, I think it is clear as a result of yesterday's conference call that SSI can no longer deny that consolidation of the two dockets is obvious and appropriate to avoid redundancy and the waste of the time and resources of the parties and the Commission and its Staff.

**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

C. Lee Fordham, Esq.  
Adam Teitzman, Esq.  
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Thank you for your consideration of Northeast Florida's positions in this matter.

Sincerely,



Kenneth A. Hoffman

KAH/rl

cc: Suzanne F. Summerlin, Esq.  
Benjamin H. Dickens, Esq.  
Lorena A. Holley, Esq.  
Ms. Debi Nobles  
Honorable Katrina J. Tew, Prehearing Officer  
Jeremy Susac, Esq.

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