

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide competitive local exchange telecommunications service by Effectel Corp. | DOCKET NO. 070670-TX
ORDER NO. PSC-08-0319-PAA-TX
ISSUED: May 14, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER TO ACCEPT THE PROPOSED SETTLEMENT OFFER BY EFFECTEL CORP AND
GRANT EFFECTEL CORP CLEC CERTIFICATE NO. 8716

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

This Order addresses Effectel Corp's (Effectel) settlement offer and application to obtain a Certificate of Public Convenience and Necessity to operate as a Competitive Local Exchange Telecommunications Company (CLEC) in Florida.

Effectel previously held authority, Certificate No. 8581, to operate as a CLEC in Florida from June 3, 2005, to December 12, 2006. We canceled Certificate No. 8581, on December 12, 2006, in Docket No. 060623-TX, In Re: Compliance investigation of EFFECTEL CORP for apparent violation of Section 364.183(1), F.S., Access to Company Records. This docket was established when the company did not respond to our request for data. The data were required for inclusion in the 2006 local competition report required by Section 364.386, Florida Statutes.

Effectel contacted this Commission seeking assistance on reapplying for CLEC authority. On October 31, 2007, the company submitted its CLEC application. On January 16, 2008, the company submitted a settlement offer, along with a payment of \$3,500, in an effort to rectify the issues for which its CLEC Certificate No. 8581 was cancelled in Docket No. 060623-TX.

We have jurisdiction over these matters pursuant to Sections 364.04, 364.285, 364.336, and 364.337, Florida Statutes.

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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, we cancelled Effectel's prior authority to provide CLEC services in Florida. The company is now seeking to reestablish that authority. In its settlement offer, Effectel claims that it has taken managerial steps to ensure that it will respond to future data requests and that "this will not occur again." In addition, Effectel offers and has submitted payment of \$3,500 to settle the unresolved issues for which its certificate was cancelled in Docket 060623-TX.

The company's technical and financial capabilities appear to be adequate. The company claims that it has not provided any CLEC services since its certificate was cancelled in December 2006. Once the company commences operations as a CLEC, it will have access to the technical resources of the underlying network providers. Plus, Effectel has paid an application fee of \$400 and has offered a cash settlement of \$3,500 (paid in advance) to resolve its past failure to comply with our rules. These payments indicate that the company has sufficient financial capability.

In this case, Effectel's managerial capability is the reason for concern. Effectel's reason for failing to respond to our data request in 2006 was that its office was not staffed. There was no one available to receive the certified mail delivery from the United States Post Office. Effectel's owner was out of the country. Our staff reviewed the documents in Docket No. 060623-TX. The United States Post Office did return the certified mailing as "unclaimed". This supports the company's claim that no one was available to receive the mail.

To rectify this, Effectel has contracted with Porras and Company, PA. Porras and Company, PA will serve as the company's official point-of-contact for regulatory matters. Porras and Company, PA currently serves as the company's liaison and continues to interface with staff throughout all phases of this proceeding. We find that this measure will bring Effectel's managerial capability to an adequate level.

We have approved a similar settlement in Docket No. 050957-TX, In Re: Compliance investigation of DSL Internet Corp d/b/a DSLi for apparent violation of Section 364.183(1), F.S., Access to Company Records. In Order PSC-06-0443-PAA-TX, we accepted the company's offer of \$3,500 to settle the issue of failing to respond to our data request.

Based on the above, approve the settlement offer proposed by Effectel Corp and grant Effectel Corp Certificate No. 8716 to operate as a competitive local exchange telecommunications company in Florida.

Conclusion:

This Order shall become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by our 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. If the Order is not protested, the company's \$3,500 settlement payment should be deposited in the General Revenue Fund. This docket should be closed upon issuance of the Consummating Order

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we approve the settlement offer proposed by Effectel Corp and grant Effectel Corp Certificate No. 8716 to operate as a competitive local exchange telecommunications company in Florida. It is further

ORDERED that this Order become final and effective upon issuance of a Consummating Order, if no person whose substantial interests are affected by this Proposed Agency Action Order files a protest 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. If we approve Issue 1, and the Order is not protested, the company's \$3,500 settlement payment should be deposited in the General Revenue Fund. If we deny Issue 1, the payment should be refunded to the company. This docket should be closed upon issuance of the Consummating Order.

By ORDER of the Florida Public Service Commission this 14th day of May, 2008.

ANN COLE
Commission Clerk

By: 

Hong Wang
Office of Commission Clerk

(S E A L)

VSM

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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 4, 2008.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.