

Marguerite McLean

From: Crawford, Debbie [DCrawford@jw.com]
Sent: Wednesday, October 15, 2008 12:43 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 080449-TX Electronic Filing
Attachments: Scan001.PDF

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Person responsible for filing:

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Docket: No. 080449-TX
Title: 2008 Local Competition Data Request
Filing on behalf of: Grande Communications
Number of Pages: 6
Description: Notice of Protest and Petition to Initiate a Proceeding

DOCUMENT NUMBER-DATE

09833 OCT 15 8

10/15/2008

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of
Grande Communications Networks, Inc.
for apparent violation of Section
364.183(1), F.S., Access to Company
Records

DOCKET NO. 080449-TX

**GRANDE COMMUNICATIONS NETWORKS, INC.'S
NOTICE OF PROTEST AND PETITION TO INITIATE A PROCEEDING**

Pursuant to Rule 28-106.201, Florida Administrative Code, and as provided by Section 120.80 (13) (b) and 120.57, Florida Statutes, Grande Communications Networks, Inc. (Grande) files this Notice of Protest and Petition to Initiate a Proceeding.

BACKGROUND

1. On September 24, 2008, the Florida Public Service Commission ("PSC") issued its Proposed Agency Action Order Imposing Penalty for Apparent Violation of Section 364.183 (1), Florida Statutes (the "PAA"). This Notice of Protest and Request for Hearing is timely filed within 21 days of the issuance of the PAA.
2. Prior to the issuance of the PAA, Grande submitted in this docket a settlement offer, a copy of which is attached as Exhibit 1 hereto. Grande stands by its offer of settlement and urges acceptance of its settlement offer such that no further proceedings would be necessary to conclude the Docket.

PETITION TO INITIATE A PROCEEDING

3. Grande's Petition to Initiate a Proceeding is being filed in order to preserve its positions in that event that the PSC and Grande are not able to reach a settlement. Should the PSC accept Grande's settlement proposal, Grande would not pursue its petition for an evidentiary hearing.

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FPSC-COMMISSION CLERK

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4. The name and address of the agency affected is:

Florida Public Services Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32299-0850
5. The name, address and telephone number of Grande is:

400 Carlson Circle
San Marcos, TX 78666-6730
(512) 878-4000
6. The name, address, and telephone number of Grande's representative for service purposes is:

Kathleen M. LaValle
Jackson Walker L.L.P.
901 Main St. Suite 6000
Dallas, TX 75202
214.953.6144 direct dial
7. Grande's substantial interests will be affected by the PSC's determination because the proposed action would assess a \$10,000 penalty against Grande and the failure to pay that penalty could result in cancellation of Grande's CLEC certificate.
8. Grande was aware of the scheduled date for release of the PPA and first became aware of its content by consulting the copy available on the PSC's website. In addition, a copy of the certified mail receipt has been filed in this Docket indicating Grande's receipt of a mailed copy of the PPA.
9. Disputed issues of fact include whether Grande timely submitted its report in compliance with Section 364.183 (1), Florida Statutes. Disputed issues also include whether the amount of the proposed penalty is appropriate given that the information Grande's single page response communicated (i.e. Grande is not providing local service in Florida), would not have added to the PSC's analysis for the Legislature as to the competitive activities of entities providing local service in Florida.

10. Grande maintains that it did timely submit its report and that it can be faulted only for failing to make the submission through a method that would have created a record of receipt. Even if Grande had not timely submitted the report, Grande submits that the amount of the proposed fine is excessive given the lack of impact the timing of Grande's filing had on the PSC's ability to complete a report on the state of local service competition.
11. Specifically, Section 364.386, Florida Statutes, requires the PSC to report to the Legislature on the status of competition in areas dealing with, for example, "[t]he overall impact of local exchange telecommunications competition on the continued availability of universal service" and "[t]he ability of competitive providers to make functionally equivalent local exchange services available to both residential and business customers at competitive rates, terms, and conditions." *Id.* Grande does not believe that its response verifying that it is not providing local telephone services in Florida would have added qualitatively to any report the PSC would make to the Legislature. Even though the PSC maintains that it is entitled to timely responses from all certificated carriers, even those not offering local telephone services, its inability to verify timely receipt of such a response from Grande hopefully did not substantively impact the PSC's ability to prepare a report on the activities of those carriers who were providing local service.
12. Grande requests by way of relief that the PSC accept Grande's offer to settle through Grande's payment of \$3,500. Alternatively, if Grande's offer to settle is rejected, Grande requests a hearing regarding its liability and regarding the appropriate amount of any fine should Grande not be able to provide proof of its timely response to the PSC's questionnaire regarding local service activity.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: s/Kathleen M. LaValle

Kathleen M. LaValle
State Bar No. 11998600

901 Main Street, Suite 6000
Dallas, TX 75202
(214) 953-6000
(214) 953-5822 – Fax

ATTORNEYS FOR GRANDE
COMMUNICATIONS NETWORKS, INC.



September 19, 2008

Via Facsimile and E-mail

Florida Public Service Commission
Director, Division of Records and Reporting
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Florida Local Competition Data Request Response: Grande Communications, Docket No. 080449

To Whom It May Concern:

It has been brought to my attention that the Florida Public Service Commission ("PSC") has no record of timely receipt of the above-mentioned Response.

I am the contact for Regulatory Filings at Grande Communications. I did submit the 2008 Local Competition Data Request Response on or before the required due date. However, I cannot locate confirmation of receipt. Regardless, I am responsible for ensuring the PSC receives the filing and should have sought confirmation. In light of this error on our part, Grande would like to propose a settlement.

In regards to the fine that may be assessed against Grande for its failure to substantiate a timely submission to the PSC, Grande offers to pay \$3,500 in order to settle this matter. Please note that for future filings, I will secure confirmation of the annual submission in order to avoid a reoccurrence. Also, in the event I am no longer the contact regarding Regulatory filings, Grande will notify the PSC of any change of contact information.

Please do not hesitate to contact me if you have further questions. If a more specific response or formal protest is necessary, please let me know. For your convenience, I am attaching another copy of Grande's Response which confirms that Grande is not providing local telephone services in Florida. We hope that the Commission will accept our offer and we appreciate your consideration.

Sincerely,

Kristene Stark
Sr. Regulatory Analyst
512.878.5424
kristene.stark@corp.grandecom.com

EXHIBIT 1

COMMISSIONERS:
MATTHEW M. CARTER II, CHAIRMAN
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

STATE OF FLORIDA



DIVISION OF COMPETITIVE MARKETS &
ENFORCEMENT
BETH W. SALAK
DIRECTOR
(850) 413-6600

Public Service Commission

March 1, 2008

TX455
Ms. Kristene Stark
Grande Communications Networks, Inc.
401 Carlson Circle
San Marcos, TX 78666-6730

RE: 2008 Local Competition Data Request

RESPONSE IS REQUIRED FROM ALL CERTIFICATED CARRIERS

If you are NOT providing local telephone services, you may check the box below and fax this page to (850) 413-6392. Since the attached CLEC questionnaire contains questions of a general nature, such as barriers to entry, you may wish to respond to any applicable questions.



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PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us