

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of North County Communications Corporation for apparent failure to accurately disclose information on application. | DOCKET NO. 110100-TX  
ORDER NO. PSC-11-0405-PAA-TX  
ISSUED: September 23, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
LISA POLAK EDGAR  
RONALD A. BRISÉ  
EDUARDO E. BALBIS  
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER CANCELLING NORTH COUNTY COMMUNICATIONS  
CORPORATION'S CLEC CERTIFICATE NO. 8799

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.

**Background**

On August 31, 2010, North County Communications Corporation (North County) submitted an application to obtain authority to provide competitive local exchange telecommunications services in Florida.<sup>1</sup> By Order No. PSC-10-0598-PAA-TX, issued September 30, 2010, we granted competitive local exchange company (CLEC) Certificate No. 8799 to North County. The Order became final and effective on October 26, 2010, upon issuance of Consummating Order No. PSC-10-0639-CO-TX.

On March 2, 2011, after the company's certificate was granted, it was discovered that North County failed to disclose civil court proceedings in other states as required by Part 16,

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<sup>1</sup> North County filed a CLEC application on August 31, 2010, to obtain a new CLEC certificate (CLEC Certificate No. 8799) after its previous CLEC certificate (CLEC Certificate No. 7764) was cancelled for failure to pay its 2009 RAF. The August 31, 2010, CLEC application was filed in Docket No. 100389-TX, In Re: Application for certificate to provide competitive local exchange telecommunications service by North County Communications Corporation.

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question F of the CLEC application. North County also submitted a resume for a deceased employee.

On April 4, 2011, North County's email confirmed its failure to disclose this information, after which we initiated a compliance investigation on April 13, 2011. Companies are required to respond accurately when answering the questions on the CLEC application, as the information provided is used to assist in evaluating the companies' managerial capabilities. We granted North County's CLEC certificate based on the erroneous information North County provided on the company's 2010 CLEC application.

The April 13, 2011 compliance investigation disclosed that North County violated Commission rules in 2002 and 2010 and was penalized and fined in 2002 and later its CLEC Certificate No. 7764 was cancelled in 2010.<sup>2</sup> On October 2, 2002, an order was issued authorizing the cancellation of North County's CLEC Certificate No. 7764 for failure to pay its 2001 RAF fees, a violation of Commission rules. However, North County paid the fees and its CLEC certificate No. 7764 was not cancelled at that time.

In 2010 North County's CLEC Certificate No. 7764 was cancelled for nonpayment of its 2009 RAF fees after a compliance docket was opened on April 26, 2010.<sup>3</sup> Prior to cancellation, North County was contacted on numerous occasions via email, telephone, and US mail in an attempt to obtain payment. On several occasions, North County's representative said that the check was mailed for the 2009 RAF payment. The payment was never received, and the company's CLEC Certificate No. 7764 was cancelled for noncompliance with Commission rules and Order.

On August 31, 2010, North County paid its outstanding RAF fees and penalties and submitted a CLEC application to obtain a new CLEC certificate, which was granted in Docket No. 100389-TX.<sup>4</sup> Based on North County's failure to disclose civil litigations in other states and its submission of a resume of a deceased person as proof of its managerial capabilities, a new CLEC application was submitted on May 9, 2011 for re-evaluation.

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<sup>2</sup> Order No. PSC-02-1332-PAA-TX, issued October 2, 2002, in Docket No. 020628-TX, In Re: Cancellation by the Florida Public Service Commission of ALEC Certificate No. 7764 issued to North County Communications Corporation for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

<sup>3</sup> Consummating Order No. PSC-10-0369-CO-TX, issued on June 8, 2010, in Docket No. 100220-TX, In Re: Compliance investigation of CLEC Certificate No. 7764, issued to North County Communications Corporation, for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. The Consummating Order made final and effective PAA Order No. PSC-10-0307-PAA-TX, issued on May 31, 2010, in Docket No. 100220-TX, In Re: Compliance investigation of CLEC Certificate No. 7764, issued to North County Communications Corporation, for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies (ordering the cancellation of CLEC Certificate No. 7764 if North County failed to pay its 2009 RAF fees and penalties).

<sup>4</sup>See Order No. PSC-10-0598-PAA-TX, issued September 30, 2010, in Docket No. 100389-TX, In Re: Application for certificate to provide competitive local exchange telecommunications service by North County Communications Corporation.

We have jurisdiction over these matters pursuant to Sections 364.02, 364.33, and 364.335, Florida Statutes.<sup>5</sup>

### Discussion

Section 364.335(2), Florida Statutes, provides in part that a certificate of authority to provide telecommunications services shall be granted 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.

Rule 25-24.810, Florida Administrative Code, Application for a Certificate, requires that an applicant for a certificate shall submit a completed Form PSC/RCP 8 (5/08) entitled "Application Form for Authority to Provide Competitive Local Exchange Service Within the State of Florida," which is incorporated into this rule by reference.

After receiving its CLEC certificate, North County acknowledged that the company misstated/omitted information on its CLEC application and that a resume attached was for a deceased person. North County has worked to resolve the matter at hand and has vowed to ensure that the company will remain in compliance with our rules in the future; however, the company's prior violations and cancellation, its misrepresentations regarding its 2009 RAF payments, and its failure to disclose civil litigations and presentment of a deceased person's resume as proof of its capabilities on its August 2010 CLEC application, demonstrate that North County does not have the managerial capability to operate and maintain a certificate of necessity in Florida.

Further, North County has indicated in its correspondence that the company has not been as diligent with ensuring that it remains in compliance within states in which it is not operational, as it has with states in which the company is operational. North County is currently not operational in Florida, and it does not have plans to begin operations this year.

We, therefore, find it appropriate to cancel North County's CLEC Certificate No. 8799 as the company has not met the managerial capability requirement of Section 364.335, Florida Statutes. Our decision is based on the following: (1) North County has not placed the same importance on ensuring compliance in Florida (a state in which the company is non-operational) as it has on ensuring compliance in other states in which the company is operational; (2) North County's consistent non-compliance of the Commission's rules; (3) CLEC Certificate No. 8799 was granted to North County based on erroneous information provided by the company which was in violation of the Commission's rules; and (4) North County's demonstrated pattern of poor

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<sup>5</sup> The Telecom Reform Act repealed Section 364.337, Florida Statutes, effective July 1, 2011, after the CLEC application was received. Section 364.33, Florida Statutes, *Certificate of necessity or authority*, now states in part that "[a] person may not provide telecommunications services to the public without a certificate of necessity or a certificate of authority [and] [a]fter July 1, 2011, the commission shall cease to issue certificates of necessity, but existing certificates of necessity remain valid." Section 364.335, Florida Statutes, outlines the factors to consider in issuing a new Certificate of Authority, and Section 364.335(4), Florida Statutes, notes that revocation of a certificate is subject to the factors outlined in the Section. Section 364.285, Florida Statutes, authorizes the revocation of certificates for violations of Commission rules.

managerial practices, as evident by North County's prior violations of Commission rules and orders.

At the September 8, 2011 Agenda Conference, it was determined that if North County failed to protest this Order and its CLEC Certificate No. 8799 is cancelled, the cancellation of the certificate in no way diminishes North County's obligation to pay applicable delinquent Regulatory Assessment Fees, and any accrued statutory late payment charges. It was also determined at the Agenda Conference that if North County failed to pay any outstanding RAF fees, then the unpaid RAF fees and any penalty and cost shall be referred to the Florida Department of Financial Services for further collection efforts.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that North County Communications Corporation's CLEC Certificate No. 8799 is hereby cancelled. It is further

ORDERED that if North County Communications Corporation fails to protest this Order and its CLEC Certificate No. 8799 is cancelled, the cancellation of the certificate in no way diminishes North County's obligation to pay applicable delinquent Regulatory Assessment Fees, and any accrued statutory late payment charges. It is further

ORDERED that if North County Communications Corporation fails to pay any outstanding RAF fees, then the unpaid RAF fees and any accrued statutory late payment charges shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

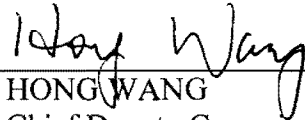
ORDERED that this Order shall become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida 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. It is further

ORDERED that if the North County Communications Corporation fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. It is further

ORDERED that if North County Communications Corporation's CLEC Certificate No. 8799 is cancelled in accordance with the Commission's Order, the company shall be required to immediately cease and desist providing local exchange telecommunications services in Florida. It is further

ORDERED that this docket shall be closed upon issuance of the Consummating Order.

By ORDER of the Florida Public Service Commission this 23rd day of September, 2011.



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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 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 October 14, 2011.

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.