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Public Service Commission

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DATE: December 28, 2011

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (Curry, Casey) *KLC*
Office of the General Counsel (Robinson) *PER* *[Handwritten Signature]*

RE: Docket No. 110100-TX – Compliance investigation of North County Communications Corporation for apparent failure to accurately disclose information on application.

AGENDA: 01/10/12 – 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\RAD\WP\110100.RCM.DOC

Case 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. By Proposed Agency Action (PAA) Order No. PSC-10-0598-PAA-TX, issued September 30, 2010, the Florida Public Service Commission (Commission) 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.

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After the company's certificate was granted, staff determined that North County had failed to accurately disclose information on its CLEC application. Specifically, North County did not list on its CLEC application the states in which the company had been involved in civil court proceedings with an interexchange carrier, local exchange company, or other telecommunications entity, and the circumstances involved as required in Part 16 question F of the CLEC application. North County also submitted a resume for an employee who was deceased at the time the resume was submitted.

Upon further investigation, staff determined that the Commission had taken regulatory action against North County in two prior dockets for failure to pay its regulatory assessment fees (RAF).¹ Based on the company's failure to accurately disclose information on its CLEC application and its two prior regulatory infractions, by PAA Order No. PSC-11-0405-PAA-TX, issued September 23, 2011, the Commission proposed to cancel North County's CLEC Certificate No. 8799 for failing to meet the managerial capability requirement of Section 364.335, Florida Statutes. On October 10, 2011, North County protested the Commission's PAA Order and offered a proposed settlement to resolve the matter.

This recommendation addresses North County's proposed settlement offer. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02, 364.33, and 364.335, Florida Statutes.²

¹ 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, was established to address North County's failure to pay its 2001 RAF payment. 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, was established to address North County's failure to pay its 2009 RAF payment. The Commission ultimately cancelled North County's initial CLEC Certificate No. 7764 for failure to pay its RAF. However, the company reapplied for a certificate and was granted its current CLEC Certificate No. 8799.

² Telecom Reform Act repealed Section 364.337, Florida Statutes effective July 1, 2011, after North County's CLEC certificate was issued. Pursuant to 364.33, Florida Statutes, the Commission no longer issues Certificates of necessity to provide CLEC services. However, existing certificates remain valid.

Discussion of Issues

Issue 1: Should the Commission accept North County Communications Corporation's settlement offer to resolve its apparent failure to accurately disclose information on its application for authority to provide competitive local exchange services?

Recommendation: Yes, the Commission should accept North County Communications Corporation's settlement offer to resolve its apparent failure to accurately disclose information on its application for authority to provide competitive local exchange services. (**Curry, Robinson**)

Staff Analysis: Section 364.335(2), Florida Statutes (F.S.), provides in part that the Commission shall grant a certificate of authority to provide telecommunications services 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, F.A.C., Application for a Certificate, requires that an applicant for a certificate shall submit a completed Form PSC/RAD 8 (5/08) entitled "Application Form for Authority to Provide Competitive Local Exchange Service Within the State of Florida," and is incorporated into this rule by reference.

As stated in the Case Background, North County failed to accurately disclose information on its CLEC application. Although the company resubmitted a thoroughly completed CLEC application, along with the required resumes and financial statements, this Commission ultimately determined that based on the company's failure to accurately disclose information on its CLEC application and its two prior regulatory infractions, North County lacked the managerial capability to operate as a CLEC in Florida.

By PAA Order No. PSC-11-0405-PAA-TX, issued September 23, 2011, the Commission proposed to cancel North County's CLEC Certificate. After the PAA Order was issued North County submitted a proposed settlement offer (Attachment A) wherein the company offered to submit a one-time voluntary payment in the amount of \$2,500 to resolve the matter. In addition to the settlement payment, North County has retained experienced regulatory counsel who will be responsible for ensuring that the company maintains future compliance.

Staff notes that in the past 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. It is North County's position that hiring experienced regulatory counsel to handle the company's regulatory matters affirms the company's commitment to maintain future compliance. North County has also been made aware that in the future if the company refuses to comply with or willfully violates any lawful rule or order of this Commission the company may be subject to possible penalties pursuant to Section 364.285, F.S., and/or cancellation of its CLEC Certificate. If penalties are assessed in the future, North County also understands that this matter will be considered when determining the amount.

North County has worked with staff to resolve the issues with the company's CLEC application. The company has also diligently worked with staff to negotiate the terms of its proposed settlement offer. North County's proposed settlement offer is consistent with a settlement offer that the Commission has approved in similar a docket. In Docket No. 050363-TP, In Re: Compliance investigation of Southeastern Services, Inc. for apparent failure to disclose required information on each of its applications for alternative access vendor certificate, competitive local exchange company certificate, and interexchange company certificate, Southeastern Services, Inc. inadvertently failed to disclose pertinent information on its applications. To resolve the matter the Commission accepted Southeastern Services, Inc.'s proposed settlement offer to voluntarily contribute a payment in the amount of \$2,500.³

Because North County's proposed settlement offer is consistent with a previous offer that the Commission has accepted for a similar violation and the company's apparent failure to accurately disclose information on its CLEC application appears to be the result of carelessness rather than a malicious attempt to defraud the Commission, staff believes that the Commission should accept the company's offer to submit a one-time voluntary payment in the amount of \$2,500 to resolve the company's apparent failure to accurately disclose information on its application for authority to provide competitive local exchange services.

³ In addition to Docket No. 050363-TP, the Commission has had two other dockets wherein a company has failed to accurately disclose information on its application. In Docket No. 080674-TP, In Re: Compliance investigation of Effectel Corp for apparent failure to accurately disclose information on application, it was alleged that Effectel Corp submitted false information on its application. In lieu of paying a penalty the company voluntarily forfeited its CLEC certificate and its interexchange company registration. In Docket No. 090480-TX, In Re: Compliance investigation of Clective Telecom Florida, LLC for apparent failure to accurately disclose information on application, Clective Telecom Florida, LLC confirmed that it intentionally falsified information on its application to show technical capability, as result the Commission cancelled the company's CLEC certificate.

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Date: December 28, 2011

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation on Issue 1 this docket should remain open pending the receipt of the \$2,500 settlement payment. The payment should be received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. The payment should be made payable to the Florida Public Service Commission and should identify the docket number and the company's name. Upon receipt of the payment, the Commission shall forward it to the Division of Financial Services to be deposited into the General Revenue Fund. If North County fails to pay the \$2,500 settlement payment within fourteen (14) calendar days after the issuance of the Consummating Order, its CLEC Certificate No. 8799 should be revoked. This docket should be closed administratively upon receipt of the settlement payment or revocation of North County's CLEC certificate.
(Curry Robinson)

Staff Analysis: Staff recommends that the Commission take action as set forth in its recommendation.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

**PETITION OF NORTH COUNTY COMMUNICATIONS CORPORATION
FOR FORMAL PROCEEDING AND HEARING**

I. INTRODUCTION AND SUMMARY

Pursuant to Rule 28-106.201, Florida Admin. Code, North County Communications Corp. ("NCC" or "Petitioner") hereby objects to the action proposed by the Commission in Order No. PSC-11-0405-PAA-TX ("Proposed Order") issued September 23, 2011. NCC requests a formal proceeding and hearing pursuant to Section 120.57, Florida Stat. NCC is also open to mediating the matter and submits the settlement proposal explained herein.

II. PETITIONER IDENTIFICATION AND AFFECTED AGENCY

Petitioner NCC, a California corporation, with principal offices at 3802 Rosecrans Avenue, Suite 485, San Diego, California 92110 (tel: 619.364.4750), operates as a competitive local exchange carrier ("CLEC") pursuant to state certifications granted in, among other states, California, Oregon, Washington, Arizona, and Illinois. NCC's corporate contact is Todd Lesser, President & CEO. In addition, NCC's representative and regulatory/legal counsel is R. Dale Dixon, Jr., Law Offices of Dale Dixon, 7316 Esfera Street, Carlsbad, California 92009 (tel: 760.452.6661).

The agency affected by this matter is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

III. PETITIONER'S INTEREST & NOTICE OF PROPOSED ORDER

NCC's substantial interests will be affected by consummation of the Proposed Order because the Proposed Order revokes NCC's carrier certification in Florida. NCC received notice of the Commission's Proposed Order via email after the Proposed Order was issued.

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IV. DISPUTED MATERIAL FACTS & NCC'S CONTENTIONS

While Petitioner does not dispute certain facts (e.g., delayed regulatory assessment fee payments and inclusion of incorrect information with its application renewal materials), NCC contends that the errors were ministerial and inadvertent, and were not intended to conceal information from or mislead the Commission or Staff. In addition, NCC inadvertently omitted cites to pending litigation because the litigation consists of collection matters in which NCC is attempting, as Plaintiff, to collect call termination fees owed by other carriers.

NCC was in the process of negotiating a resolution of the matter and was surprised to receive a Proposed Order. When NCC last spoke to Staff, Mr. Lesser was under the impression that a final proposal would be agreed to, under which NCC would (i) make a one-time payment to the State's General Fund in the amount of \$2,500 and (ii) implement a more reliable system of calendar checks and ticklers to ensure future compliance with Commission filing and payment deadlines.

V. REQUESTED RELIEF: REVERSAL OF THE PROPOSED ORDER

NCC does not deny that it missed the Commission's payment deadlines, and NCC sincerely regrets its lack of oversight with respect to those obligations. The omissions and inadvertent inclusions were a result of submitting attachments from previous Florida filings. The previously submitted attachments were reattached because NCC, which has not begun operations in Florida (in large part due to the nationwide anti-competitive behaviors of Verizon), did not immediately recognize that any changes were warranted. NCC immediately corrected its filing when the problems were brought to its attention.

Based on cases provided to NCC by Staff, more egregious examples of noncompliance have resulted in approved applications, and NCC respectfully requests that the Commission allow NCC the same opportunity to improve its filing compliance.

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VI. SETTLEMENT PROPOSAL

NCC is committing financial and human resources to ensure future compliance with the Commission's filing and payment deadlines. NCC has retained regulatory counsel (see above Sec. II) with 16+ years of telecom corporate, regulatory and litigation experience. Counsel will monitor closely NCC's calendar system and create a triple calendar system that consists of paper calendars, electronic calendar reminder systems, and a third-party calendar to be maintained and monitored by NCC's counsel.

In addition, NCC proposes to make a one-time voluntary payment to the State General Fund in the amount of \$2,500. Prior to the release of the Proposed Order, Staff indicated that such an amount would be appropriate in light of the circumstances in this case.

VII. CONCLUSION

NCC looks forward to launching successful CLEC operations in Florida and maintaining an excellent relationship with the Commission and Staff, and to that end, NCC requests that the Commission not consummate the Proposed Order, and instead, reinstate NCC's certification and accept NCC's proposed settlement and assurances of future compliance.

Respectfully submitted,

s/R. Dale Dixon, Jr.
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Counsel for North County Communications Corp.

s/Todd Lesser
Todd Lesser, President & CEO
North County Communications Corp.

Dated: October 10, 2011

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