

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: June 23, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Buys)
Office of the General Counsel (Fordham)

RE: Docket No. 050363-TP – 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.

AGENDA: 07/05/05 – 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\CMP\WP\050363.RCM.DOC

Case Background

June 16, 1999 – The Florida Public Service Commission (Commission) granted Southeastern Services, Inc. (SSI) a certificate of public convenience and necessity (certificate) to provide Competitive Local Exchange Company (CLEC) services (Certificate No. 7018).

March 23, 2001 - The Commission granted SSI a certificate to provide Alternative Access Vendor (AAV) services (Certificate No. 7767).

December 28, 2001 - The Commission granted SSI a certificate to provide Interexchange Company (IXC) services (Certificate No. 7988).

March 31, 2005 - Northeast Florida Telephone Company (NEFCOM) submitted a letter, dated March 29, 2005, indicating that the applications for certificates filed by SSI failed to disclose that Mr. Mark Woods, President of SSI, was adjudicated guilty of the felony crime of grand theft on December 4, 1979, and requested that the Commission conduct an investigation into the matter.

April 1, 2005 through April 29, 2005 – Commission staff completed its initial investigation into the matter and determined that SSI did not disclose the information as required on the AAV, CLEC, and IXC certificate application forms. Staff sent SSI a letter on April 12, 2005, requesting a written response explaining SSI's position and the company's proposal to resolve the issue.

May 4, 2005 – SSI, through its legal counsel, submitted a letter, dated May 4, 2005, in which the company explained the circumstances of Mr. Woods' felony adjudication.

May 19, 2005 – SSI, through its legal counsel, submitted a letter, dated May 19, 2005, in which the company offered to make a \$2,500 contribution to the Florida General Revenue Fund to settle the matter (Attachment A).

June 7, 2005 – SSI, through its legal counsel, submitted a letter, dated June 6, 2005, in which the company provided amendments to the company's original applications addressing Mr. Wood's felony adjudication (Attachment B).

Discussion of Issues

Issue 1: Should the Commission accept Southeastern Services, Inc.'s settlement offer to resolve its apparent failure to disclose required information on each of its applications for a certificate of public convenience and necessity to provide services within the State of Florida as an Alternative Access Vendor, a Competitive Local Exchange Company, and an Interexchange Company?

Staff Recommendation: Yes.

Staff Analysis: Section 364.335(1)(a)&(d), Florida Statutes, Application for a Certificate, states:

(1) Each applicant for a certificate shall:

(a) Provide all information required by rule or order of the commission, which may include a detailed inquiry into the ability of the applicant to provide service, . . .

(d) Submit an affidavit that the applicant has caused notice of its application to be given to such persons and in such manner as may be prescribed by commission rule.

Rule 25-24.810, Florida Administrative Code (F.A.C.), Application for a Certificate, requires that an applicant for a certificate shall submit an application on Form PSC/CMP 8 (11/95) entitled "Application Form for Authority to Provide Competitive Local Exchange Service Within the State of Florida", and is incorporated into this rule by reference.

Rule 25-4.720, F.A.C., Application for a Certificate, requires that an applicant seeking to provide Alternative Access Vendor Service shall submit an application on Commission Form PSC/CMP 43 (1/95), entitled "Application Form for Authority to Provide Alternative Access Vendor Service Within the State of Florida," and is incorporated into this rule by reference.

Rule 25-4.471, F.A.C., Application for Certificate, requires that an applicant desiring to apply for a certificate shall submit an application on Commission Form PSC/CMP 31 (12/96), entitled "Application Form for Authority to Provide Interexchange Telecommunications Service Between Points Within the State of Florida," and is incorporated into this rule by reference.

Each of the above referenced application forms contains a section whereby the applicant is required to indicate if any of the officers, directors, or any of the ten largest stockholders have previously been found guilty of any felony or of any crime. In each of the applications submitted by SSI for an AAV, CLEC, and IXC certificate, Mr. Woods listed "No" or "None" in response to the aforementioned question. However, documents provided in NEFCOM's letter dated March 29, 2005, indicate that Mr. Woods entered a plea of Nolo Contendere to grand theft on December 4, 1979.

To resolve this matter, SSI submitted a settlement offer to do the following:

1. Amend the certificate applications so that each application lists “Yes” to the question if any officer has previously been found guilty of any felony, include an explanation of the circumstances, and sign an affidavit attesting to the accuracy of the information.
2. Voluntarily contribute the sum of \$2,500 to the Florida General Revenue Fund.

The amended applications have been placed in the appropriate docket files. SSI is current on its payments of Regulatory Assessment Fees for each of its three certificates and has no outstanding complaints. Further, the Commission has received only two consumer complaints against SSI since obtaining its certificates; one on January 25, 2001, and the second on January 3, 2002.

The subject matter at issue in this recommendation has never been previously addressed by the Commission at Agenda. The Commission is vested with jurisdiction in this matter pursuant to Sections 364.285, 364.335, 364.337, 364.345, Florida Statutes. Accordingly, staff recommends that the Commission accept Southeastern Services, Inc.’s settlement offer to resolve its apparent failure to disclose required information on each of its applications for a certificate of public convenience and necessity to provide services within the State of Florida as an Alternative Access Vendor, a Competitive Local Exchange Company, and an Interexchange Company.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation 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. If SSI 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. If SSI fails to pay the amount of the voluntary contribution within fourteen (14) calendar days of the issuance of the Consummating Order, Certificate Nos. 7018, 7767, and 7988 should be cancelled. If SSI's certificates are cancelled, the company should be required to immediately cease and desist providing all intrastate telecommunications services in Florida. This docket should be closed administratively upon either receipt of the payment of the voluntary contribution or upon the cancellation of the company's certificates. **(L. Fordham)**

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