

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: March 27, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (McCoy)
Office of the General Counsel (McKay)

RE: Docket No. 070670-TX – Application for certificate to provide competitive local exchange telecommunications service by Effectel Corp.

AGENDA: 04/08/08 – 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\070670.RCM.DOC

Case Background

This recommendation 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. The Commission 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 staff's request for data. The data

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were required for inclusion in the 2006 local competition report required by Section 364.386, Florida Statutes.

Effectel contacted staff 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.

The Commission has jurisdiction over these matters pursuant to Sections 364.04, 364.285, 364.336, and 364.337, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission accept 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 as provided by Section 364.337(1), Florida Statutes?

Recommendation: Yes. The Commission should accept 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. **(McCoy, McKay)**

Staff 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, the Commission 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 the Commission's 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 staff's 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. 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. Staff believes that this measure will bring Effectel's managerial capability to an adequate level.

The Commission has 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

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364.183(1), F.S., Access to Company Records. In Order PSC-06-0443-PAA-TX, the Commission accepted the company's offer of \$3,500 to settle the issue of failing to respond to staff's data request.

Based on the above, staff recommends that the Commission accept 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.

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Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will 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 the Commission approves staff's recommendation in Issue 1, and the Order is not protested, the company's \$3,500 settlement payment should be deposited in the General Revenue Fund. If the Commission denies staff's recommendation in Issue 1, the payment should be refunded to the company. This docket should be closed upon issuance of the Consummating Order. **(McKay)**