

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: August 7, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Polk, Casey, J.Mann)
Office of the General Counsel (R. Mann)

RE: Docket No. 070348-TX – Petition for designation as eligible telecommunications carrier (ETC) by Swiftel LLC.

AGENDA: 08/19/08 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCP\WP\070348.RCM.DOC

Case Background

On May 30, 2007, Swiftel LLC (Swiftel) petitioned the Florida Public Service Commission (FPSC or Commission) for designation as an Eligible Telecommunications Carrier (ETC) in the State of Florida. Specifically, Swiftel is requesting that it be granted ETC status throughout the non-rural BellSouth/AT&T (AT&T) and Verizon territories for purposes of receiving federal universal service support. Swiftel has consummated interconnection agreements with both AT&T and Verizon. The company states that it is only seeking low income support, and that it is not requesting high-cost support from the federal Universal Service Fund (USF). Swiftel's primary purpose in requesting ETC status in Florida is to provide Lifeline and Link-Up services.

Swiftel is an FPSC certificated competitive local exchange carrier (CLEC) which provides local exchange and exchange access services in the AT&T and Verizon areas through resale services. Upon designation as an ETC, Swiftel indicates that it will participate in and offer Lifeline and Link-Up programs to qualified low-income consumers. Additionally, Swiftel has committed to publicize the availability of Lifeline and Link-Up services in a manner reasonably designed to reach those likely to qualify for those services.

Swiftel is a limited liability company organized under the laws of the State of Florida on August 18, 2006, under the name Swiftel LLC. The company currently is certificated to provide telecommunication services in the State of Florida through certificate number 8682. The principal office of the company is located at 3048 Cobblestone Drive, Pace, Florida 32571.

Staff drafted an affidavit for ETC applicants to sign attesting that the ETC applicant will follow all Florida Statutes, Florida Administrative Rules, Florida PSC Orders, Federal Communication Commission (FCC) rules, FCC Orders, and regulations contained in the Telecommunications Act of 1996 regarding Universal Service, ETCs, Link-Up and Lifeline, and toll limitation service. Swiftel signed, and returned the affidavit (See Attachment A).

Swiftel filed a petition for ETC designation on or about January 15, 2008 with the Alabama Public Service Commission (APSC). By Order issued April 15, 2008, in Docket No. 30436, the APSC granted Swiftel ETC status in Alabama. Swiftel asserts that it does not currently hold ETC status in any other states.

As of June 14, 2008, Swiftel states that it serves 1,201 Florida residential customers on a prepaid basis. Swiftel has no commercial customers. Swiftel, if granted ETC status, states that it will provide local exchange and exchange access services in the requested designated service areas using a combination of resale and wholesale local platform (WLP)/unbundled network element (UNE) lines. According to FCC Rules, facilities obtained as WLP/UNE lines satisfy the requirement that an ETC provide the supported services using its own facilities.

The Commission has authority under Section 364.10(2), Florida Statutes, to decide a petition by a CLEC seeking designation as an eligible telecommunications carrier pursuant to 47 C.F.R. § 54.201.

Discussion of Issues

Issue 1: Should Swiftel be granted ETC designation in the State of Florida?

Recommendation: No, staff recommends that Swiftel not be granted ETC designation in the state of Florida. (Polk, Casey)

Staff Analysis: Under FCC rules, the state commissions have the primary responsibility to designate providers as ETCs.¹ Designation as an ETC is required in order for a provider to be eligible to receive monies from the federal USF. Section 254(e) of the Act² provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific federal universal service support.”³ According to Section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal Universal Service mechanisms throughout a designated service area.

ETC Certification Requirements

The Code of Federal Regulations addresses a state commission’s responsibilities related to an ETC designation:⁴

Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

To qualify as an ETC, a carrier must provide nine services identified in 47 CFR 54.101. The services are:

- (1) Voice grade access to the public switched network Voice grade access is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call;
- (2) Local Usage Local usage indicates the amount of minutes of use of exchange service, provided free of charge to end users;

¹ 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b).

² 47 U.S.C. § 254 of the 1996 Telecom Act

³ 47 U.S.C. § 254(e)(2).

⁴ 47 C.F.R. § 54.201(c)

- (3) Dual tone multi-frequency signaling or its functional equivalent Dual tone multi-frequency ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, thus shortening call set-up time;
- (4) Single-party service or its functional equivalent Single-party service is telecommunications service that permits users to have exclusive use of a wire line subscriber loop or access line for each call placed, or in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;
- (5) Access to emergency services Access to emergency services includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations;
- (6) Access to operator services Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing and/or completion, of a telephone call;
- (7) Access to interexchange service Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;
- (8) Access to directory assistance Access to directory assistance is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and
- (9) Toll limitation for qualifying low-income consumers Toll limitation or blocking restricts all direct dial toll access.

In addition to providing the above services, ETCs must advertise the availability of such services and the associated charges using media of general distribution.

Additional ETC Certification Requirements

In addition to requiring the above services, the FCC, on March 17, 2005, issued a Report and Order that established additional criteria that all ETC applicants must satisfy in order to be granted ETC status by the FCC.⁵ In this Order, the FCC determined that an ETC applicant must also demonstrate:

- 1) a commitment and ability to provide the supported services throughout the designated area;
- 2) the ability to remain functional in emergency situations;

⁵ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order FCC 05-46, Adopted: February 25, 2005, Released: March 17, 2005.

- 3) ability to satisfy consumer protection and service quality standards;
- 4) provision of local usage comparable to that offered by the incumbent LEC; and
- 5) an acknowledgement that the applicant may be required by the FCC to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to Section 214(e)(4) of the Act.

The FCC encouraged states to also adopt these criteria, and the FPSC has done so in Docket No. 010977-TL (State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314), by Order No. PSC-05-0824-TL, issued August 15, 2005.

Public Interest Determinations

Under Section 214 of the Act, the FCC and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity for rural areas. They also must consider whether an ETC designation serves the public interest consistent with Section 254 of the Act. Congress did not establish specific criteria to be applied under the public interest tests in Section 214 or Section 254. The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.⁶ Staff believes that before designating a carrier as an ETC, the FPSC should make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.

Swiftel's Petition

Swiftel is requesting that it be granted ETC status throughout the non-rural AT&T and Verizon territories for the purpose of receiving federal universal service support. The company maintains that it will only be seeking low-income support and is not requesting high-cost support from the federal USF. Swiftel's primary purpose in requesting ETC status in Florida is to provide Lifeline and Link-Up services. While analyzing Swiftel's petition and history, staff concluded the following:

1. Swiftel has not paid its Florida regulatory assessment fees for 2007 - On July 7, 2008, staff opened Docket No. 080487-TX⁷ to address Swiftel's violation of Rule 25-4.0161, F.A.C. Swiftel, LLC (TX922) has not paid its 2007 Regulatory Assessment Fee (RAF), which was due by January 30, 2008. The delinquent notice was sent via certified mail and delivered on February 28, 2008. The notice stated that in order to avoid an automatic fine of \$500,

⁶ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order FCC 05-46 (¶40), Adopted: February 25, 2005, Released: March 17, 2005.

⁷ Compliance investigation of CLEC certificate No. 8682, issued to Swiftel, LLC for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees.

payment had to be postmarked within 15 days of receipt of the notice, meaning the last day to postmark payment to avoid the automatic fine was March 14, 2008. No response was received from the company. Pursuant to Rule 25-4.0161, F.A.C., an order (PAA) imposing the fine is scheduled to be issued August 25, 2008, and the company will have 21 days to either protest the order or pay the past due RAF, including late payment charges, plus the \$500 fine. If the company does neither, its CLEC certificate will be administratively cancelled for not complying with the order.

2. Swiftel did not correctly respond to staff's data request No. 25 - Data request No. 25 asked Swiftel to provide its corporate structure. Swiftel responded that it is a stand-alone entity, owned by one individual, Angie M. Watson. Staff subsequently discovered through the Florida Division of Corporations' database that Swiftel has two owners, Angie M. Watson, and Leonard I. Solt, each owning a 50% share of Swiftel.
3. Swiftel did not correctly respond to staff's data request No. 37 - Data request No. 26 asked Swiftel to provide a list of Swiftel owners or corporate officers and indicate if any are also owners or corporate officers of any other telecommunication companies. Swiftel's response was "Angie M. Watson – President." Swiftel failed to indicate whether any owners or corporate officers are also owners or corporate officers of any other telecommunication companies.

In staff's second round of data requests, staff indicated to Swiftel that it had information indicating responses to data requests 25 and 26 were not correct. To follow-up Swiftel's responses to data requests 25 and 26, staff asked Swiftel, in data request No. 37, to verify all present and past owners and corporate officers of Swiftel and indicate if they are owners or officers of any other telecommunication companies. Swiftel then responded that there were two owners of Swiftel, Angie M. Watson and Leonard I. Solt. However, Swiftel also responded that neither Mr. Solt nor Angie M. Watson own or are any part of any other telecommunications companies. Staff's investigation indicates otherwise.

The FPSC Master Commission Directory lists Angie M. Franco (now Angie M. Watson) as Operating Manager of Seven Bridges Communications, L.L.C. (Seven Bridges). By Order No. PSC-06-1013-PAA-TX, issued December 8, 2006, the Commission imposed a \$10,000 fine on Seven Bridges for violation of Section 364.183(1), Florida Statutes, failure to respond to staff's data request effectively and denying staff access to its records. On January 2, 2007, staff cancelled Seven Bridges CLEC certificate for failure to respond to orders PSC-06-1013-PAA-TX, and PSC 07-0011-CO-TX.⁸

The Florida Division of Corporations' database also shows Angie M. Franco (now Angie M. Watson) as registered agent for 321 Communications, Inc. Christopher S. Watson, husband of Angie M. Watson, is President of 321 Communications, Inc. and a 30% owner of the company. In addition, the Florida Division of Corporations' database shows Leonard I.

⁸ Docket No. 060624-TX, In re: Compliance investigation of Seven Bridges Communications, L.L.C. for apparent violation of Section 364.183(1), F.S., Access to Company Records.

Solt as Secretary/Treasurer of 321 Communications, Inc. According to documents filed in the Florida Division of Corporations' database, Leonard I. Solt is a 50% owner of Swiftel and also a 30% owner of 321 Communications, Inc. in Florida. In data request No. 43, staff asked what the relationship was between 321 Communications, Inc. and Swiftel. Swiftel responded that it purchases enhanced services from 321 Communications, and Swiftel holds agreements with various carriers and sells DID services to 321 Communications, Inc.

4. Swiftel's Oregon Certificate of Authority to Provide Telecommunications Service has been cancelled – By Order No. 08-277, issued May 21, 2008, Swiftel's Certificate of Authority to provide telecommunications service in Oregon as a competitive provider was cancelled. Swiftel neglected to pay any revenue fees for 2007, as required by Oregon statute (ORS) 756.310. On April 14, 2008, the Oregon Commission notified the certificate holder that the required fees were not received. ORS 756.515(4) provides that the Commission may, after investigation, but without hearing, make such findings and orders as deemed justified by the results of the investigation. The Commission determined at its May 6, 2008, Public Meeting that the certificate holder failed to comply with Commission rules and terms of the certificate and therefore, cancelled Swiftel's Certificate of Authority to provide telecommunications service in accordance with Oregon administrative rule 860-032-0008(2).
5. Angie M. Franco (now Angie M. Watson), as Operating Manager of Seven Bridges Communications, LLC, abandoned its Petition for ETC Status in the state of South Carolina. On April 27, 2007, Seven Bridges filed its Petition requesting ETC designation in the state of South Carolina. On June 18, 2007, the South Carolina Public Service Commission issued a Notice of Hearing and a Prefile Testimony letter. The hearing was scheduled for July 27, 2007, with the parties' prefiled direct testimony and exhibits due on July 2, 2007. On June 28, 2007, prior to any filing of direct testimony and exhibits, Seven Bridges filed a Motion to Hold Petition in abeyance for 180 days, which was subsequently approved.

As the 180-day abeyance approached, the Seven Bridges Attorney made multiple attempts via e-mail, telephone, fax, and certified mail to contact his client. Seven Bridges never responded to its attorney to address the January 25, 2008 abeyance expiration. On February 25, 2008, the attorney filed a Motion To Be Relieved as Counsel with the South Carolina Public Service Commission. The attorney stated that "Since the Commission held this matter in abeyance, Seven Bridges has failed to participate with counsel in this matter." On March 12, 2008, the South Carolina Public Service Commission granted the attorney's Motion To Be Relieved as Counsel, and dismissed the petition of Seven Bridges.

6. Swiftel failed to disclose its ETC Petition in the State of Montana was dismissed – Staff data requests Numbers 33 and 34 asked Swiftel if it had been denied ETC status in any state, or if it had withdrawn any petitions to provide telecommunications service or ETC status in any states. Swiftel replied "No" to both questions.

On April 16, 2007, Swiftel filed an application for designation as an ETC with the state of Montana. On August 6, 2007, the Montana Public Service Commission notified Swiftel that its application did not reference Montana law, including Montana's ETC rules, and did not comply with Montana laws. Montana PSC staff discussed the matter with Swiftel, but

Swiftel failed to amend its application to comply. The Montana PSC dismissed Swiftel's application for ETC status on August 6, 2007.

Staff also has concerns regarding other associations of the President of Swiftel. Swiftel has provided Steven T. Watson as a reference on Swiftel's original petition for CLEC status. According to the Florida Division of Corporations' database, Steven T. Watson was President of TeleConex and is currently President of Lost Key Telecom, a CLEC consulting/billing agent company. Christopher S. Watson, son of Steven T. Watson was Vice President of TeleConex, Inc. and is currently President of 321 Communications.

From June 2, 2004, through September 17, 2004, FPSC staff received 121 complaints filed against TeleConex. FPSC staff contacted the company after receiving each complaint and requested that the company investigate the complaints and submit a written response. Of the 121 complaints that were filed against the company, TeleConex failed to respond to forty-one of those complaints. Staff made several attempts to obtain responses to the forty-one unresolved customer complaints without success. In addition, TeleConex failed to pay its underlying carriers for services rendered. TeleConex's failure to provide the required responses to the customer complaints was found to be a "willful violation" of Rule 25-22.032(6)(b), Florida Administrative Code, by Order PSC-04-1244-PAA-TX, issued December 16, 2004.

Additionally, by Order PSC-04-1244-PAA-TX, the Commission imposed penalties in the amount of \$410,000 against TeleConex for forty-one (41) apparent violations of Rule 25-22.032(6)(b), Florida Administrative Code, Customer Complaints. In addition, the Commission imposed an additional penalty of \$500 for its apparent violation of Rule 25-24.835, Florida Administrative Code, for failure to provide updated contact information to the Commission. After not receiving payment of the penalties imposed on TeleConex, the docket was closed and TeleConex's certificate No. 5207 was cancelled.

Conclusion

As mentioned previously, before designating a carrier as an ETC, the FPSC should make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier. Staff's investigation shows that Swiftel has not paid its 2007 regulatory assessment fees, and that it has provided incomplete, incorrect and/or misleading information in response to staff's data requests. Staff believes that Swiftel does not have the management capability necessary to be designated as an ETC in the state of Florida. Therefore, staff recommends that it is not in the public interest to designate Swiftel as an ETC in Florida. Staff will be following up on issues brought forth in this docket which may affect the company's CLEC certificate. Denying ETC status to Swiftel will not prevent it from providing Link-Up and Lifeline services to its customers. Swiftel can purchase Link-Up and Lifeline through its resale agreement(s) with its underlying carrier(s).

Docket No. 070348-TX

Date: August 7, 2008

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected files a protest to the Commission's Proposed Agency Action within 21 days of the issuance of the Commission Order, this docket should be closed upon issuance of a consummating order. (Mann)

Staff Analysis: If no person whose substantial interests are affected files a protest to the Commission's Proposed Agency Action within 21 days of the issuance of the Commission Order, this docket should be closed upon issuance of a consummating order.

AFFIDAVIT

State of Florida
County of Escambia

BEFORE ME, the undersigned authority, appeared Angie Watson,
who deposed and said:

My name is Angie Watson, I am employed by
Swiftel LLC located at
811 W. Garden St Pensacola FL 32507 as its
_____. I am an officer of the Company and am authorized to give this
affidavit on behalf of the Company. This affidavit is being given to support the Eligible
Telecommunications Carrier petition filed by my Company with the Florida Public Service
Commission (PSC).

Company hereby certifies the following:

1. Company will follow all Florida Statutes, Florida Administrative Rules, and Florida PSC Orders relating to Universal Service, Eligible Telecommunications Carriers, and the Florida Link-Up and Lifeline Program.
2. Company will follow all FCC rules, FCC Orders, and regulations contained in the Telecommunications Act of 1996 regarding Universal Service, ETCs, Link-Up and Lifeline, and toll limitation service.
3. Company agrees that the Florida PSC may revoke a carrier's ETC status for good cause after notice and opportunity for hearing, for violations of any applicable Florida Statutes, Florida Administrative Rules, Florida PSC Orders, failure to fulfill requirements of Sections 214 or 254 of the Telecommunications Act of 1996, or if the PSC determines that it is no longer in the public interest for the company to retain ETC status.
4. Company understands that if its petition for ETC status is approved, it will be for limited ETC status to provide Link-Up, Lifeline, and toll-limitation service only, and the Company will be eligible only to receive low-income support from the Universal Service Fund.
5. Company understands that it may only receive reimbursement from the Universal Service Administrative company (USAC) for active customer Link-Up and Lifeline access lines which are provided using its own facilities or using access lines obtained as wholesale local platform lines (formerly UNE lines) from another carrier. The Company shall not apply to USAC for reimbursement of Link-Up and Lifeline access lines obtained from an underlying carrier which already receive a Lifeline and/or Link-Up credit provided by the underlying carrier.
6. Company understands that the PSC shall have access to all books of account, records and property of all eligible telecommunications carriers.

7. Company understands that low income support reimbursed by USAC for toll limitation service is available only for the incremental costs that are associated exclusively with toll limitation service.
8. Company agrees that upon request, it will submit to the PSC a copy of Form 497 forms filed with USAC to:
Florida Public Service Commission
Division of Regulatory Compliance, Market Practices Section
2540 Shumard Oak Drive
Tallahassee, Florida 32303
9. Company understands that in accordance with the Florida Lifeline program, eligible customers will receive a \$13.50 monthly discount on their phone bill, \$3.50 of which is provided by the ETC, and \$10.00 of which is reimbursable from the Federal Universal Service Fund.

FURTHER AFFIANT SAYETH NOT.

Angie Watson 7/8/08
 Signature Date
Angie Watson
 Printed Name

Business Address:
811 W. Garden St
Pensacola FL 32501

State of FLORIDA
 County of ESCALABIA

Acknowledged before me this 8 day of JULY, 2008 by ANGIE WATSON, as
PRESIDENT of Company, who is personally known to me or produced identification and
 who did take an oath.



Beth Wilson
 NOTARY PUBLIC
BETH WILSON
 Printed Name of Notary

Personally Known _____
 Produced Identification FLDC
 Type of Identification Produced W325013776790