

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: December 23, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Kennedy)
Office of the General Counsel (Brooks)

RE: Docket No. 080674-TP – Compliance investigation of Effectel Corp for apparent failure to accurately disclose information on application.

AGENDA: 01/06/09 – 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\RCP\WP\080674.RCM.DOC

Case Background

On January 27, 2005, Effectel Corp (Effectel) registered as an intrastate interexchange telecommunications company (IXC) in Florida. The company was assigned IXC Registration No. TJ982. On July 20, 2006, the Commission issued Proposed Agency Action (PAA) Order No. PSC-06-0615-PAA-TI, in Docket No. 060466-TI, In re: Compliance investigation of IXC registration holders for apparent first-time violation of Section 364.336, F.S. The Commission penalized Effectel \$500 for failing to pay its 2005 regulatory assessment fee (RAF). The company retained its IXC registration by paying the RAF and penalty.

Effectel failed to pay the RAF on its IXC registration for a second time. On August 27, 2007, the Commission issued PAA Order No. PSC-07-0696-PAA-TI, in Docket No. 070493-TI,

In re: Compliance investigation of IXC registration holders for apparent second-time violation of Section 364.336, F.S. The Commission penalized Effectel \$1,000 for failing to pay its 2006 RAF. Again, the company retained its IXC registration by paying the RAF and penalty.

On June 3, 2005, the Commission granted Effectel Certificate No. 8581 to provide competitive local exchange company (CLEC) services in Florida. On July 20, 2006, the Commission issued PAA Order PSC-06-0611-PAA-TX in Docket No. 060462-TX, In re: Compliance investigation of CLEC certificate holders for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. The Commission penalized Effectel \$500 for failing to pay its 2006 RAF. The company paid the RAF and penalty, retaining its CLEC certificate.

On November 16, 2006, the Commission issued PAA Order No. PSC-06-0955-PAA-TX 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. Effectel was penalized \$10,000 for failing to respond to staff's request seeking data for the 2006 local competition report required by Section 364.386, Florida Statutes. Effectel failed to respond to the Order and its CLEC certificate was cancelled.

On October 31, 2007, Effectel reapplied for a CLEC certificate. On May 14, 2008, the Commission issued PAA Order No. PSC-08-0319-PAA-TX in Docket No. 070670-TX, In re: Application for certificate to provide competitive local exchange telecommunications service by Effectel Corp. The Commission accepted Effectel's settlement offer and approved Effectel's application. As part of its settlement, the company hired an independent consulting company to handle its regulatory affairs to preclude any future compliance issues such as those described above. The Commission assigned the company CLEC Certificate No. 8716 which became effective on June 9, 2008.

On August 25, 2008, the Commission received an e-mail from Mr. Carlos Bernal. Mr. Bernal stated that he was surfing the Internet and found a document numbered 09902 Oct-31-07 FPSC COMMISSION CLERK, referring to an Application Form for Authority to Provide Competitive Local Exchange Telecommunication Company Service within the State of Florida. Mr. Bernal alleged that information in the resume of Ms. Maria del Carmen Hernandez Cuervo was false. He stated that the information in Ms. Cuervo's resume was taken from his wife, Ms. Sonia Marcela Bastidas. Mr. Bernal claimed that almost all of the personal data belongs to his wife. It was his belief that Mr. Mario Safi presented false information (to the Commission) to maintain the license in the United States.

Staff determined that the document Mr. Bernal referenced in his e-mail was Effectel's CLEC application in Docket No. 070670-TX. Staff communicated with Mr. Bernal via e-mail on several occasions between August 26, 2008 and September 10, 2008.

Staff contacted Effectel's regulatory consultant seeking a response to the allegations in Mr. Bernal's e-mail. In a letter dated September 17, 2008, Effectel reported that three of the resumes submitted with its CLEC application in Docket No. 070670-TX contained errors. Effectel submitted revised resumes and personal identification documents (all notarized) for each

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affected employee. Effectel explained that a customer service employee prepared the original resumes, both Spanish and English versions, that were submitted to staff during the CLEC application process in Docket No. 070670-TX. Effectel stated that its management failed to review the resumes that were submitted during the application process.

In a letter dated November 6, 2008, Effectel has offered to voluntarily forfeit its CLEC Certificate No. 8716, voluntarily forfeit its IXC Registration No. TJ982, and to cease doing business in Florida in order to resolve its apparent failure to accurately disclose information on the CLEC application in Docket No. 070670-TX. In the recommendation that follows, staff addresses Effectel's settlement offer.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.285, 364.335, 364.337, 364.345, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission accept Effectel Corp's offer to voluntarily forfeit CLEC Certificate No. 8716 and IXC Registration No. TJ982 to resolve the company's apparent failure to accurately disclose information in Docket No. 070670-TX, application for a certificate of public convenience and necessity to provide telecommunications services within the State of Florida as a competitive local exchange company?

Recommendation: Yes, the Commission should accept Effectel Corp's offer to voluntarily forfeit CLEC Certificate No. 8716 and IXC Registration No. TJ982 to resolve the company's apparent failure to accurately disclose information in Docket No. 070670-TX, application for a certificate of public convenience and necessity to provide telecommunications services within the State of Florida as a competitive local exchange company. (Kennedy, Brooks)

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.

Further, Section 364.337(1), Florida Statutes, provides in part that 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. Rule 25-24.810, Florida Administrative Code (F.A.C.), Application for a Certificate, requires that an applicant for a certificate shall submit a completed 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.

Form PSC/CMP 8 (11/95) contains a section whereby the applicant is required to submit resumes of employees and officers of the company that would indicate sufficient managerial and technical experience to manage, operate, and maintain a telecommunications company. As explained in the Case Background, Effectel submitted resumes in its application for a CLEC certificate in Docket No. 070670-TX. The Commission authorized Effectel to be a CLEC based upon the resumes and other information provided by Effectel in its application.

Via an unsolicited e-mail from a third party, the Commission and staff learned that a resume in Effectel's application may be flawed. Effectel acknowledged that three of the resumes submitted with its CLEC application were flawed. Effectel was not able to explain how the errors occurred, e.g., it did not know if the errors were made intentionally or unintentionally by

an employee that was tasked to prepare the resumes. Effectel's management failed to review the resumes before submitting them to the Commission.

In discussions with Effectel's representative, staff expressed concern about the company's management capabilities. Staff discussed Effectel's recent history regarding four compliance dockets (presented in the Case Background) established for the company's apparent failures to comply with the Commission's rules. Staff also advised the representative that a compliance docket would be initiated to investigate Effectel's failure to accurately disclose information on its CLEC application in Docket No. 070670-TX.

Effectel's representative expressed that he was unsure as to what to do. Staff suggested that he review documents in a prior Commission proceeding, specifically 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. In this case, a third party informed the Commission that Southeastern Services, Inc. failed to disclose information required by the application. To resolve this matter, Southeastern Services, Inc. made an offer, that was accepted by the Commission, to submit revisions to the applications and to make a voluntary payment of \$2,500 to the Commission for deposit in Florida's General Revenue Fund.

Effectel's Offer

Effectel claims that its offer is based on personal illness in the family, general economic difficulties, and difficulties in starting its business. Effectel provided that it made no sales or served any customers during 2008, nor does it hold any customers' deposits. To resolve matters in this docket, Effectel offers:

1. to voluntarily forfeit CLEC Certificate No. 8716 and IXC Registration No. TJ982, in lieu of paying a \$2,500 penalty;
2. to pay the 2008 regulatory assessment fees for both its CLEC certificate and IXC registration (payment has been received by the Commission);
3. to not renew its corporate registration with the Florida Secretary of State; and
4. to close the business as of December 31, 2008.

Staff notes that there have been no customer complaints filed against Effectel. In addition, Effectel has paid all of its regulatory assessment fees.

Accordingly, staff recommends that the Commission should accept Effectel Corp's offer to voluntarily forfeit CLEC Certificate No. 8716 and IXC Registration No. TJ982 to resolve the company's apparent failure to accurately disclose information in Docket No. 070670-TX, application for a certificate of public convenience and necessity to provide telecommunications services within the State of Florida as a competitive local exchange 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 the Commission accepts Effectel's offer of forfeiture of CLEC Certificate No. 8716 and IXC Registration No. TJ982, the company should also be required to immediately cease and desist providing all intrastate telecommunications services in Florida, and the CLEC certificate and IXC registration should become inactive on December 31, 2008. If there is no protest, this docket should be closed upon issuance of the Consummating Order. (Brooks)

Staff Analysis: Staff recommends that the Commission take action as set forth in the foregoing staff recommendation statement.