

MINUTES OF February 22, 2011
COMMISSION CONFERENCE
COMMENCED: 9:32 am
ADJOURNED: 10:08 am

COMMISSIONERS PARTICIPATING: Chairman Graham
Commissioner Edgar
Commissioner Brisé
Commissioner Balbis
Commissioner Brown

Parties were allowed to address the Commission on items designated by double asterisks (**).

1 **Approval of Minutes**
 January 11, 2011 Regular Commission Conference
 January 25, 2011 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

<u>ITEM NO.</u>	<u>CASE</u>
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2** **Consent Agenda**

PAA A) Application for Certificate to Provide Competitive Local Exchange Telecommunications Service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
100447-TX	Voxbeam Telecommunications Inc.

PAA B) Requests for Cancellation of Competitive Local Exchange Telecommunications Certificates.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>EFFECTIVE DATE</u>
110038-TX	Discount Phone Services, Inc.	12/31/2010
110045-TX	CloseCall America, Inc	12/31/2010

Recommendation: The Commission should approve the action requested in the dockets referenced above and close these dockets.

DECISION: The recommendation was approved.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

ITEM NO.

CASE

3

Docket No. 090538-TP – Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; and John Does 1 through 50 (CLECs whose true names are currently unknown) for rate discrimination in connection with the provision of intrastate switched access services in alleged violation of Sections 364.08 and 364.10, F.S. (Deferred from the February 8, 2011 Commission Conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: GCL: Tan

RAD: Gowen, Trueblood

(Oral Argument Not Requested; Participation is at the Discretion of the Commission.)

Issue 1: Should the Joint Motion to Dismiss Qwest's First and Second Claims for Relief and Request for Reparations in the Form of Refunds be granted?

Recommendation: No. The Commission should deny the Movants' Motion to Dismiss because Qwest has stated a cause of action for which relief may be granted.

Issue 2: Should this docket be closed?

Recommendation: No. If the Commission accepts staff's recommendation, this docket should not be closed until after an evidentiary hearing has been held and a final order issued. If the Commission denies staff's recommendation in Issue 1 and grants the Movants' Motion to Dismiss, the Movants should be removed as parties and the docket should remain open.

DECISION: The recommendations were approved.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

ITEM NO.

CASE

4**PAA

Docket No. 110029-TX – Compliance investigation of Easy Telephone Services Company for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: RAD: Curry

GCL: Evans, Tan

Issue 1: Should the Commission accept Easy Telephone Services Company's settlement offer to resolve one-hundred six (106) apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

Recommendation: Yes, the Commission should accept Easy Telephone Services Company's settlement offer to resolve one-hundred six (106) apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection.

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 \$106,000 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 Easy Tel fails to pay the \$106,000 settlement within fourteen (14) calendar days after the issuance of the Consummating Order, its CLEC Certificate No. 7300 should be revoked. This docket should be closed administratively upon receipt of the settlement payment or revocation of the CLEC certificate.

DECISION: The recommendations were approved.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

ITEM NO.

CASE

5**PAA

Docket No. 110027-TI – Compliance investigation of Optic Internet Protocol, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: RAD: M. Watts

GCL: P. Evans, M. Brown

Issue 1: Should the Commission penalize Optic Internet Protocol, Inc. \$10,000 per apparent violation, for a total of \$1,460,000 for 146 apparent violations of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection?

Recommendation: Yes, Optic Internet Protocol, Inc. should be penalized \$10,000 per apparent violation, for a total of \$1,460,000 for 146 apparent violations of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection. If Optic Internet Protocol, Inc. fails to request a hearing, pursuant to Section 120.57, F.S., within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If the company fails to pay the amount of the penalty within fourteen calendar days after issuance of the Consummating Order, registration number TK171 should be removed from the register, the company's tariff should be cancelled, and the company should also be required to immediately cease and desist from providing intrastate interexchange telecommunications service within Florida.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested, the docket should be closed administratively upon either receipt of the payment of the penalty or upon the removal of the company's registration number from the register and cancellation of the company's tariff. If the company's registration is cancelled, OIP's underlying carrier should be notified to discontinue providing wholesale services to OIP in Florida.

DECISION: The recommendations were approved as discussed in the Commission Conference, with direction to staff.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

ITEM NO.

CASE

6**

Docket No. 100400-WU – Investigation of rates of O&S Water Company, Inc. in Osceola County for possible overearnings.

Docket No. 100440-WU – Application for transfer of water facilities in Osceola County from O&S Water Company, Inc., to Tohopekaliga Water Authority and cancellation of Certificate No. 510-W.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Jones-Alexis, Fletcher, Kaproth, Maurey, Prestwood, Slemkewicz

GCL: Williams, Crawford

Issue 1: Should the Commission acknowledge the transfer of O&S' water facilities and territory to TWA as a matter of right and cancel Certificate No. 510-W?

Recommendation: Yes. The Commission should acknowledge the transfer of O&S' water facilities and territory as a matter of right, pursuant to Section 367.071(4)(a), F.S., and cancel Certificate No. 510-W effective December 8, 2010.

Issue 2: Should the Commission initiate an overearnings investigation of O&S, as ordered in Order No. PSC-10-0656-FOF-WU in Docket No. 100400-WU?

Recommendation: No. If the Commission acknowledges the transfer of O&S to TWA and cancels Certificate No. 510-W, the Commission should close the overearnings investigation of O&S as initiated by Order No. PSC-10-0656-FOF-WU, and any funds held subject to refund should be released to the Utility.

Issue 3: Should Docket Nos. 100400-WU and 100440-WU be closed?

Recommendation: Yes. If the Commission approves staff's recommendations in Issues 1 and 2, Docket Nos. 100400-WU and 100440-WU should be closed, as no further action is required.

DECISION: This item was deferred to a later Commission Conference.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

ITEM NO.

CASE

7

Docket No. 100426-WS – Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.

Critical Date(s): 02/25/11 (60-day Suspension Date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Balbis

Staff: ECR: Fletcher, Buys, Cicchetti, Maurey, Williams

GCL: Saylor

(Decision on Interim Rates; Participation is Limited to Commissioners and Staff.)

Issue 1: Should the Utility's proposed final water and wastewater rates be suspended?

Recommendation: Yes. LUSI's proposed final water and wastewater rates should be suspended.

Issue 2: Should any interim revenue increase be approved?

Recommendation: Yes, LUSI should be authorized to collect annual water revenues as indicated below:

	Adjusted Test		Revenue	
	<u>Year Revenues</u>	<u>\$ Increase</u>	<u>Requirement</u>	<u>% Increase</u>
Water	\$4,170,103	\$1,332,875	\$5,502,978	31.96%

Issue 3: What are the appropriate interim water rates?

Recommendation: The water service rates for LUSI in effect as of December 31, 2009, should be increased by 32.56 percent, to generate the recommended revenue increase for the interim period. The approved rates should be effective for service rendered as of the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1)(a), F.A.C. The rates should not be implemented until staff verifies that the tariff sheets are consistent with the Commission's decision, the proposed customer notice is adequate, the required security has been filed, and the customers have received the notice. The Utility should provide proof of the date notice was given within 10 days after the date of notice.

ITEM NO.

CASE

7

Docket No. 100426-WS – Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.

(Continued from previous page)

Issue 4: What is the appropriate security to guarantee the interim increase?

Recommendation: A corporate undertaking is acceptable contingent upon receipt of the written guarantee of the parent company, Utilities, Inc. (UI), and written confirmation of UI's continued attestation that it does not have any outstanding guarantees on behalf of UI-owned utilities in other states. UI should be required to file a corporate undertaking on behalf of its subsidiaries to guarantee any potential refunds of revenues collected under interim conditions. The cumulative amount of revenue that needs to be protected is \$930,102. The Utility should be required to open an escrow account or file a surety bond or letter of credit to guarantee any potential refund of revenues collected under interim conditions. If the security provided is an escrow account, the Utility should deposit 24.22 percent of water revenues into the escrow account each month. Otherwise, the surety bond or letter of credit should be in the amount of \$778,078. Pursuant to Rule 25-30.360(6), F.A.C., the Utility should provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and in accordance with Rule 25-30.360, F.A.C.

Issue 5: Should the docket be closed?

Recommendation: No. The docket should remain open pending the Commission's PAA decision on the Utility's requested rate increase.

DECISION: The recommendations were approved with noted oral modification by staff.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

ITEM NO.

CASE

8

Docket No. 100104-WU – Application for increase in water rates in Franklin County by Water Management Services, Inc.

Critical Date(s): None

Commissioners Assigned: Graham, Edgar (for this decision)

Prehearing Officer: Graham

Staff: GCL: Jaeger, Sayler

ECR: Hudson, Fletcher, Maurey

(Oral Argument Not Requested - Participation of Parties is at Discretion of the Commission.)

Issue 1: Should the Commission grant the Office of Public Counsel's Motion for Reconsideration of a portion of Order No. PSC-11-0010-SC-WU?

Recommendation: No. The Commission did not overlook or fail to consider a point of fact or law in rendering Order No. PSC-11-0010-SC-WU; therefore, OPC's Motion for Reconsideration should be denied.

DECISION: The recommendation was approved.

Issue 2: Should the Commission grant the Office of Public Counsel's Motion for Clarification of a portion of Order No. PSC-11-0010-SC-WU?

Recommendation: Yes. The Commission should clarify that the tool of imputation advocated by OPC is available if needed to protect customers. Further, the Commission should find that the parameters of the cash flow audit that it directed staff to begin are adequate.

DECISION: The recommendation was approved and as noted on page 10 of the staff recommendation provided clarification.

Issue 3: Should this docket be closed?

Recommendation: No, this docket should remain open until: (1) staff confirms that the appropriate refunds have been made; (2) the appropriate notices and tariffs have been filed and approved by staff; and (3) the show cause proceedings are concluded. Upon those events being completed, the docket may be closed administratively.

DECISION: The recommendation was approved and as noted on page 10 of staff's recommendation provided clarification.

Commissioners participating: Graham, Edgar

ITEM NO.

CASE

9

Docket No. 090501-TP – Petition for arbitration of certain terms and conditions of an interconnection agreement with Verizon Florida, LLC by Bright House Networks Information Services (Florida), LLC.

Critical Date(s): None

Commissioners Assigned: Edgar, Brisé (for this decision)

Prehearing Officer: Brisé

Staff: RAD: Bloom, Trueblood

GCL: Murphy

(Motion For Reconsideration of Final Post Hearing Order)

Issue 1: Should the Commission grant the Bright House Amended Request for Oral Argument?

Recommendation: No. The Commission should deny the Bright House Amended Request for Oral Argument.

Issue 2: Should the Commission reconsider its Decision regarding Issue 7?

Recommendation: No. The Commission should deny the Bright House Motion for Reconsideration of Issue 7.

Issue 3: Should the Commission grant Bright House's Motion to Reconsider Issues 24 and 36?

Recommendation: No. The Commission should deny Bright House's Motion to Reconsider Issues 24 and 36.

Issue 4: Should this Docket be closed?

Recommendation: No. This Docket should remain open pending the filing and administrative review of an interconnection agreement which conforms to the decisions reached by the Commission in this Docket.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Brisé