

MINUTES OF May 4, 2010
COMMISSION CONFERENCE
COMMENCED: 9:48 am
ADJOURNED: 11:49 am

COMMISSIONERS PARTICIPATING: Chairman Argenziano
Commissioner Edgar
Commissioner Skop
Commissioner Klement
Commissioner Stevens

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

1 **Approval of Minutes**
 March 16, 2010 and April 6, 2010 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

ITEM NO. **CASE**

2** **Consent Agenda**

PAA A) Application for certificate to provide competitive local exchange telecommunications service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
100163-TX	Crexendo Business Solutions, Inc.

PAA B) Application for certificate to provide pay telephone service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
100151-TC	DSI-ITI, LLC

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

DECISION: The recommendation was approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

ITEM NO.

CASE

3**PAA

Docket No. 040763-TP – Request for submission of proposals for relay service, beginning in June 2005, for the hearing and speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: RAD: Casey

GCL: Tan

SSC: Moses

Issue 1: Should the Commission approve FTRI's proposed budget as outlined in Attachment A of staff's memorandum dated April 23, 2010, for the fiscal year 2010-2011, effective July 1, 2010, and should the Commission maintain the current Telecommunications Relay Service (TRS) surcharge of \$0.11 per month?

Recommendation: Staff recommends that the Commission approve FTRI's proposed budget operating revenue of \$9,871,383, and proposed budget expenses of \$13,950,655 as outlined in Attachment A, for the fiscal year 2010-2011, effective July 1, 2010, with one exception. Staff recommends a decrease of \$798,047 in Relay Provider Services. Staff also recommends that the TRS surcharge be maintained at \$0.11 per month for the fiscal year 2010-2011, effective July 1, 2010. The Commission should order the incumbent local exchange companies, competitive local exchange companies, and shared tenant providers to continue to bill the \$0.11 surcharge for the fiscal year 2010-2011, effective July 1, 2010.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open for the duration of the contract period with Sprint as the relay provider. This docket is used to monitor relay and contract issues that arise during the contract term.

DECISION: The recommendations were approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

ITEM NO.

CASE

4**PAA

Docket No. 090011-EU – Complaint and petition to rescind approval of territorial agreement between Progress Energy Florida, Inc. and Withlacoochee River Electric Cooperative, Inc. by Mark Williams, as Trustee of S.A. Williams Trust, and S.A. Williams Corporation.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Argenziano

Staff: GCL: Brown

ECR: Daniel, Rieger

Issue 1: Should the Commission approve the joint petition to amend the territorial agreement between Progress Energy Florida, Inc. (PEF) and Withlacoochee River Electric Cooperative (WREC), and acknowledge the voluntary dismissal without prejudice of Mr. Williams' complaint and petition?

Recommendation: Yes. The joint petition to amend the territorial agreement between PEF and WREC should be approved. Additionally, the Commission should acknowledge the voluntary dismissal without prejudice of Mr. Williams' complaint and petition.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected files a protest to the Commission's proposed agency action order within 21 days, the docket may be closed upon issuance of the consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

ITEM NO.

CASE

5

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.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: GCL: Tan

RAD: King, Trueblood

(Partial Motion to Dismiss – Oral Argument Requested)

Issue 1: Should the Joint CLECs' and Verizon Access' Requests for Oral Argument on their Motions be granted?

Recommendation: No, the Requests for Oral Argument should not be granted. Staff believes that the parties' filings have provided sufficient information regarding the Motions at issue. Consequently, staff recommends that the Commission should not hear oral argument from the parties. However, should the Commission decide to grant oral argument, staff recommends that each side be allowed ten minutes to present its argument.

DECISION: The recommendation was denied. The request for oral argument was approved.

Issue 2: Should the Joint CLECs' Partial Motion to Dismiss and Verizon Access' Motion to Dismiss Reparations Claim be granted?

Recommendation: Yes. The Joint CLECs' Partial Motion to Dismiss and Verizon Access' Motion to Dismiss Reparations Claim should be granted to the extent Qwest seeks monetary damages or injunctive relief. Staff believes the Commission lacks the authority to (a) issue injunctions or (b) award damages. However, staff notes that the Commission has the authority to order refunds, if applicable.

DECISION: The recommendation was approved.

ITEM NO.

CASE

5

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 (CLEC's 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.

(Continued from previous page)

Issue 3: Should Verizon Access' Motion for Summary Final Order Dismissing All Other Claims Against Verizon Access be granted?

Recommendation: No. A conclusive showing that there is no genuine issue of material fact in dispute cannot be made until there has been adequate time for the discovery process and testimony. Therefore, staff recommends that Verizon Access' Motion for Summary Final Order should be denied without prejudice.

DECISION: The recommendation was approved.

Issue 4: Should this docket be closed?

Recommendation: No. If the Commission approves or denies staff's recommendations in Issue 2 and 3, this docket should remain open. However, if the Commission denies staff's recommendation in Issue 3 and grant the motion for summary final judgment, Verizon Access should be removed as a party.

DECISION: The recommendation was approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

ITEM NO.

CASE

6**PAA

Docket No. 090245-TP – Petition for limited designation as eligible telecommunications carrier (ETC) by Virgin Mobile USA, L.P.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Argenziano

Staff: RAD: Beard, Casey

GCL: Tan

Issue 1: Should Virgin Mobile be granted limited ETC status in Florida for the purpose of offering Lifeline discounts to qualifying consumers in Florida?

Recommendation: Yes. Staff recommends that Virgin Mobile be granted limited ETC designation status in the AT&T, Verizon, and CenturyLink wire centers listed in Attachment B of staff's memorandum dated April 23, 2010, for the sole purpose of offering Lifeline discounts to qualifying consumers in Florida. Granting of ETC designation should be contingent on Virgin Mobile providing the following:

- E911 compliant handsets should be provided to Virgin Mobile's new Lifeline customers and Virgin Mobile should replace any non-compliant handsets for its existing customers who are approved as Lifeline customers at no charge;
- Each Lifeline customer shall receive 200 free anytime minutes each month;
- Self-certification of Virgin Mobile Lifeline customers under penalty of perjury once service has been activated. In addition to the PSC's annual Lifeline verification eligibility requirement, annual certification verifying that the head of household is only receiving Lifeline discounts from Virgin Mobile;
- Tracking of Lifeline customer's primary residential address and certification that there is only one customer receiving Virgin Mobile Lifeline at each residential address;
- Virgin Mobile should deal directly with its customers who do not utilize the Lifeline Automatic Enrollment function, to certify and verify Lifeline eligibility; and
- Submission of a quarterly report showing the number of customers who have been deactivated for not having any activity on their phone in a 60-day period, not passing annual verification, and voluntarily being deactivated.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

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

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

ITEM NO.

CASE

7**

Docket No. 100148-EQ – Petition for approval of revisions to renewable energy tariff, by Florida Public Utilities Company.

Critical Date(s): 11/26/10 (8-Month Effective Date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: RAD: Lewis

GCL: Brown

Issue 1: Is the standard offer contract filed by Florida Power Utilities Company in compliance with Rules 25-17.200 through 25-17.310, F.A.C.?

Recommendation: Yes. The Standard Offer Contract proposed by FPUC is in compliance with Rules 25-17.200 through 25-17.310, F.A.C., and therefore should be approved.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation to approve the proposed Standard Offer Contract and tariffs filed by FPUC, and no person whose substantial interests are affected requests a hearing to address this matter, then Docket No. 100148-EQ should be closed upon issuance of a consummating order, and the Standard Offer Contracts and tariffs filed by FPUC should be effective as of the date of the Commission's vote. If Issue 1 is approved, this tariff should become effective on May 4, 2010. If a protest is filed within 21 days of the issuance of the Commission's order, the tariffs should remain in effect pending resolution of the protest. Potential signatories to the standard offer contract should be aware that FPUC's tariffs and standard offer contracts may be subject to a request for hearing, and if a hearing is held, may subsequently be revised.

DECISION: The recommendations were approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

ITEM NO.

CASE

8**PAA

Docket No. 090537-EQ – Petition for approval of amended negotiated purchase power contract with BG&E of Florida, LLC by Progress Energy Florida.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: RAD: Matthews, Gilbert

ECR: Franklin

GCL: Fleming

Issue 1: Should the petition submitted by Progress Energy Florida, Inc. requesting approval of the amended contract with BG&E of Florida, LLC, be approved?

Recommendation: Yes. As in the original contract, the rates, terms, and conditions of the amended agreement can reasonably be expected to contribute toward the deferral or avoidance of additional capacity construction by PEF. The net present value (NPV) of the total contract payments represent an expected savings of \$47 million as compared to the cost of as-available energy using the current avoided unit and the most current fuel forecast at the time the contract was negotiated. Also, due to the reduced committed capacity, the NPV of the total payments is approximately \$74 million less than those under the original contract.

Issue 2: Should this docket be closed?

Recommendation: Yes, this docket should be closed 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.

DECISION: The recommendations were approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

ITEM NO.

CASE

9**PAA

Docket No. 100174-TP – Request of Matrix Telecom, Inc. for waiver of Rule 25-4.118, FAC, Local, Local Toll or Toll Provider Selection regarding a transaction where Matrix will acquire substantially all of the assets and customers of Comtel Telcom Assets LP, and request for cancellation of Comtel Telcom Assets LP's CLEC Certificates No. 5687, 4695, 4699 and IXC Registration Nos. TK025, TK028, and TK029.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: RAD: Lowery, M. Watts

GCL: Brooks

Issue 1: Should the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C., in the transfer of local and long distance customers to Matrix Telecom, Inc. from Comtel Telcom Assets LP?

Recommendation: Yes, the Commission should approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. Any waiver approved by the Commission should only apply to the specific set of customers identified in the petition. The petitioners should be required to provide the Commission notification of the actual date when the transaction is consummated. If for any reason the transaction is not consummated, any waiver approved by the Commission shall be null and void.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this order should become final upon issuance of a consummating order. This docket should remain open pending the cancellation of Comtel's CLEC Certificates and IXC Registrations. Upon completion of these actions, this docket should be closed administratively.

DECISION: The recommendations were approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

ITEM NO.

CASE

10**

Docket No. 100094-WS – Notice of appointment of receiver for Service Management Systems, Inc. in Brevard County pursuant to Circuit Court foreclosure proceeding.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Daniel, Kaproth, J. Williams

GCL: Fleming, A. Williams

Issue 1: Should the Commission acknowledge the appointment of Mr. Dennis Basile as receiver for Service Management Systems, Inc.?

Recommendation: Yes. The Commission should acknowledge the appointment of Mr. Dennis Basile as receiver for SMS effective February 3, 2010. The territory previously approved for this utility is described in Attachment A of staff's memorandum dated April 23, 2010. The resultant order should serve as SMS's Certificate Nos. 517-W and 450-S and should be retained by the utility. The rates and charges approved for the utility should be continued until authorized to be changed by the Commission in a subsequent proceeding. The receiver should ensure that utility pays its 2009 RAFs and files the 2009 annual report by June 30, 2010.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending payment of the 2009 RAFs and filing of the 2009 Annual Report. Upon payment of the utility's 2009 RAFs and filing of the utility's 2009 Annual Report, this docket should be closed administratively.

DECISION: The recommendations were approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

ITEM NO.

CASE

11**

Docket No. 090521-WS – Application for amendment of Certificates 247-S and 353-W to extend water and wastewater service areas to include certain land in Charlotte County by North Fort Myers Utility, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: ECR: Walden

GCL: Jaeger

Issue 1: Should the Commission approve North Fort Myers Utility, Inc.'s application for amendment of Certificates 247-S and 353-W to extend water and wastewater service areas to include certain land in Charlotte County?

Recommendation: Yes, the Commission should approve North Fort Myers Utility, Inc.'s application to expand its territory into Charlotte County and amend Certificates 247-S and 353-W. The proposed territory is described in Attachment A of staff's memorandum dated April 23, 2010. The resultant order should serve as NFMU's certificates and the order should be retained by the Utility. NFMU should charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves Staff's recommendation in Issue 1, no further action is required and the docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

ITEM NO.

CASE

12**

Docket No. 090170-WU – Application for staff-assisted rate case in Lee County by Mobile Manor Water Company, Inc.

Critical Date(s): 09/07/10 (15-Month Effective Date (SARC))-Waived

Commissioners Assigned: Edgar, Skop, Stevens

Prehearing Officer: Edgar

Staff: ECR: Smith, Fletcher, Hudson, Maurey

GCL: Jaeger

Issue 1: Should the Commission approve the proposed Settlement Agreement?

Recommendation: Yes. The proposed Settlement Agreement should be approved. Within 15 days of the Commission vote, Mobile Manor should file a proposed customer notice and revised tariff sheets which are consistent with the Commission's decision. The approved rates should be effective for service rendered on or after the stamped approval date of the tariff, pursuant to Rule 25-30.475(1), F.A.C., after staff has verified that the proposed customer notice is adequate and the notice has been provided to the customers. The Utility should provide proof that the customers have received notice within 10 days after the date of the notice. With the approval of the Settlement Agreement, the escrowed funds should be released to the Utility.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon the issuance of the final order approving the Settlement Agreement.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Skop, Stevens