



Public Service Commission

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RECORDS AND REPORTING
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AGENDA PSC

DATE: JANUARY 25, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF REGULATORY OVERSIGHT (PRUITT)
DIVISION OF ECONOMIC REGULATION (LESTER)
DIVISION OF LEGAL SERVICES (BANKS)

[Handwritten signatures and initials: PRUITT, LESTER, BANKS, etc.]

RE: DOCKET NO. 001621-TX - APPLICATION FOR CERTIFICATE TO PROVIDE ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE BY COMM SOUTH COMPANIES, INC. D/B/A FLORIDA COMM SOUTH.

AGENDA: 02/06/01 - REGULAR AGENDA - ISSUE 2 PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\001621.RCM

CASE BACKGROUND

On December 11, 1996, the Commission granted Comm South Companies, Inc. d/b/a Florida Comm South (f/k/a Onyx Distributing Company, Inc. d/b/a Florida Comm South) Certificate No. 4757 to provide alternative local exchange telecommunication services in Florida.

On June 25, 1999, the Commission mailed a certified letter to the company requesting information necessary for inclusion in the local competition report required of the Commission by Section 364.386, Florida Statutes. On December 6, 1999, a second certified letter requesting the data by December 22, 1999, was sent. No response was received.

In Docket No. 000230-TX the Commission issued on April 12, 2000, Order No. PSC-00-0680-SC-TX for apparent violation of Section

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364.183(1), Florida Statutes, Access to Company Records. Florida Comm South was ordered to show cause in writing within 21 days of the date of the order why it should not be fined or have its certificate canceled for not responding to the data request. The company did not respond to the order and on May 25, 2000, Certificate No. 4757 was administratively canceled and the show cause docket closed.

By letter dated October 4, 2000, Florida Comm South informed Commission staff that due to corporate office relocation and personnel changes the company had failed to respond to the Commission's data request. The company stated that the show cause recommendation and order were not received by the appropriate company personnel due to the corporate relocation. The company further stated that it was not aware its certificate had been canceled until September 2000, when one of its sales agents was informed that Florida Comm South was no longer certificated. The company requested that its certificate be reinstated or that the company be granted a new certificate and offered a settlement of \$3,500, establishment of procedures to prevent similar incidents and submission of the data for the local competition report.

After review of the settlement offer and discussions with staff, by letter dated October 27, 2000, the company submitted an application for a new certificate, a response to the 2000 ALEC data request, an offer of an amended settlement amount of \$7,500 to be paid within 20 days of the issuance date of the Commission Order, and an agreement to establish procedures for complying with Commission filing requirements and data requests.

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

ISSUE 1: Should the Commission accept the amended settlement offer submitted by Comm South Companies, Inc. d/b/a Florida Comm South as resolution of apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records?

RECOMMENDATION: Yes. The Commission should accept the amended settlement offer of \$7,500 by Comm South Companies, Inc. d/b/a Florida Comm South since it is a reasonable resolution of the matters at issue. The contribution should be received by the Commission within 20 days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. (Pruitt)

STAFF ANALYSIS: In the October 27, 2000, amended settlement offer, Florida Comm South proposes a settlement of \$7,500 and commits to the establishment of procedures to prevent similar incidents from reoccurring which led to the opening of Show Cause Docket No. 000230-TX and the cancellation of Certificate No. 4757.

The Commission has approved settlement offers of \$3,500 and \$4,000 from certificated companies that neither provided the requested information nor presented evidence of reasonable mitigating factors to account for their failure to provide the Commission requested information. Therefore, due to the cancellation of Florida Comm South's certificate, staff believes the terms of the amended settlement offer as summarized in this recommendation are fair and reasonable, and we support Florida Comm South's offer of settlement.

The contribution should be received by the Commission within 20 days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should the Commission grant Florida Comm South a certificate to provide alternative local exchange telecommunication services within the State of Florida as provided by Section 364.337(1), Florida Statutes?

RECOMMENDATION: Yes. Comm South Companies, Inc. d/b/a Florida Comm South should be granted, after payment of \$7,500 in accordance with the amended settlement offer is received:

Florida Public Service Commission Certificate No. 7742.

If the payment is not received within 20 days of the issuance of the Commission Order, the application is deemed denied. (Pruitt)

STAFF ANALYSIS: Section 364.337(1), Florida Statutes, reads in part:

The commission shall grant a certificate of authority to provide alternative 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.

Florida Comm South filed an application with this Commission on October 27, 2000, to offer alternative local exchange telecommunications service in Florida. A review of the application indicates that the company appears to meet the requirements of Section 364.337(1), Florida Statutes.

Even though the Commission canceled Florida Comm South's certificate in 2000, due to its failure to respond to the data request and to Order No. PSC-00-0680-SC-TX, staff accepts the company's representation that these were oversights which will not occur again. Therefore, staff recommends that the Commission grant Comm South Companies, Inc. d/b/a Florida Comm South a certificate to provide alternative local exchange telecommunications service.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee of \$50 if the certificate is active during any portion of the calendar year. A Regulatory Assessment Fee Return notice will be mailed each December to Florida Comm South for payment in January.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, upon timely remittance of the \$7,500 voluntary settlement offer, if no person whose substantial interests are affected by the Commission's decision in Issue 2 files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a Consummating Order. (Banks)

STAFF ANALYSIS: If the \$7,500 voluntary settlement offer is received by the Commission within 20 days of the issuance of the order and no timely protest to the proposed agency action in Issue 2 is filed within 21 days of the date of issuance of the order, this docket should be closed upon the issuance of the Consummating Order.