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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: August 24, 2011

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (Curry) *KLC*
Office of the General Counsel (Robinson) *PER*

RE: Docket No. 110100-TX – Compliance investigation of North County Communications Corporation for apparent failure to accurately disclose information on application.

AGENDA: 09/08/11 – 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\RAD\WP\110100.RCM.DOC

Case Background

On August 31, 2010, North County Communications Corporation (North County) submitted an application to obtain authority to provide competitive local exchange telecommunications services in Florida.¹ By Order No. PSC-10-0598-PAA-TX, issued

¹ North County filed a CLEC application on August 31, 2010, to obtain a new CLEC certificate (CLEC Certificate No. 8799) after its previous CLEC certificate (CLEC Certificate No. 7764) was cancelled for failure to pay its 2009 RAF. The August 31, 2010, CLEC application was filed in Docket No. 100389-TX, In Re: Application for certificate to provide competitive local exchange telecommunications service by North County Communications Corporation.

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September 30, 2010, the Florida Public Service Commission (Commission) granted competitive local exchange company (CLEC) Certificate No. 8799 to North County. The Order became final and effective on October 26, 2010, upon issuance of Consummating Order No. PSC-10-0639-CO-TX.

After the company's certificate was granted, on March 2, 2011, staff was informed by Verizon that North County did not list on its CLEC application the states in which the company had been involved in civil court proceedings with an interexchange carrier, local exchange company, or other telecommunications entity, and the circumstances involved as required in Part 16 question F of the CLEC application. Verizon also informed staff that North County had submitted a resume for an employee who was deceased at the time the resume was submitted. Upon being notified of North County's omission on its CLEC application and the resume, staff began to further investigate the matter.

Shortly after staff became aware of North County's omission on its CLEC application and the company's erroneous submission of a resume for a deceased employee, North County contacted staff. On April 4, 2011, staff received an email from the President of North County confirming Verizon's allegations. According to the email, the 2010 CLEC application that was filed by the company's representative contained several errors and omissions. North County also admitted that it had failed to include all of the states in which the company has authority to operate on the application.

Each company is required to respond accurately when answering the questions on the CLEC application because staff routinely uses the information provided to assist in evaluating a company's managerial capability. Staff's recommendation for the Commission to grant North County's CLEC certificate in Docket No. 100389-TX, In Re: Application for certificate to provide competitive local exchange telecommunications service by North County Communications Corporation, was based on the information that was provided on the company's 2010 application. After reviewing North County's email, staff informed the company's President that a compliance investigation would be initiated because the information contained in North County's CLEC application was incomplete and incorrect. On April 13, 2011, Docket No. 110100-TX, In Re: Compliance investigation of North County Communications Corporation for apparent failure to accurately disclose information on application, was established to further investigate the matter and to determine if North County should retain its current CLEC certificate.

During the investigation, staff determined that the Commission has taken regulatory action against North County in two prior dockets for failure to pay its 2001 and 2009 regulatory assessment fees (RAF). Prior to obtaining the company's current certificate (CLEC Certificate No. 8799), the Commission granted North County authority to provide CLEC services in Florida pursuant to CLEC Certificate No. 7764. However, CLEC Certificate No. 7764 was ultimately cancelled in 2010 because the company failed to pay its 2009 RAF.

On June 28, 2002, Docket No. 020628-TX, In Re: Cancellation by the Florida Public Service Commission of ALEC Certificate No. 7764 issued to North County Communications Corporation for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees;

Telecommunications Companies, was established to address North County's failure to pay its 2001 RAF payment. By Proposed Agency Action (PAA) Order No. PSC-02-1332-PAA-TX, issued October 2, 2002, the Commission ordered the cancellation of North County's CLEC certificate unless the company paid a \$500 penalty and all past due regulatory assessment fees, along with any accrued statutory penalties and interest charges. After the PAA order was issued, North County complied with the Commission's orders. Therefore, the company's CLEC certificate was not cancelled at that time.

However, in 2010 North County's CLEC Certificate No. 7764 was cancelled for nonpayment of its 2009 RAFs after a compliance docket was opened on April 26, 2010.² Prior to cancellation, staff contacted North County numerous times via email, telephone, and US mail in attempt to obtain payment. On several occasions, North County's representative advised staff that the check was mailed for the 2009 RAF payment. However, the payment was never received, and the company's CLEC Certificate No. 7764 was cancelled for noncompliance with Commission rules.

On August 31, 2010, North County submitted a CLEC application to obtain a new CLEC certificate and paid the 2010 regulatory assessment fees that were owed for the period in which the company operated during 2010 (January through June) prior to the cancellation of its CLEC Certificate No. 7764. Upon receipt of the CLEC application, Docket No. 100389-TX, In Re: Application for certificate to provide competitive local exchange telecommunications service by North County Communications Corporation, was established. The Commission ultimately granted the company its current certificate (CLEC Certificate No. 8799) based on the erroneous information and omission in the application.

As previously stated, North County notified staff via email on April 4, 2011, that the company's 2010 CLEC application contained several errors and omissions. After receiving the email, staff sent a letter dated April 25, 2011, to North County requesting that the company resubmit a thoroughly completed CLEC application for re-evaluation, along with the required resumes and financial statements. The letter also requested that the company provide a detailed explanation addressing the errors in its 2010 CLEC application.

After receiving the letter, North County contacted staff on May 2, 2011, and a conference call was scheduled with the company's President for the following day. During the conference call, staff reiterated the concerns that were expressed in the April 25, 2011, letter. North County's President agreed to correct and resubmit the company's CLEC application. North County's corrected application was resubmitted on May 9, 2011.

Upon receiving the company's amended CLEC application, staff re-evaluated the application to determine if North County possessed the managerial, technical, and financial capability to retain its current CLEC certificate. This recommendation addresses staff's findings.

² Consummating Order No. PSC-10-0369-CO-TX, was issued in Docket No. 100220-TX, In Re: Compliance investigation of CLEC Certificate No. 7764, issued to North County Communications Corporation, for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. The order made final and effective Proposed Agency Action Order No. PSC-10-0307-PAA-TX, wherein the Commission ordered the cancellation of CLEC Certificate No. 7764 if North County failed to pay its 2009 RAF payment and penalties.

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The Commission has jurisdiction over these matters pursuant to Sections 364.02, 364.33, and 364.335, Florida Statutes.³

³ Telecom Reform Act repealed Section 364.337, Florida Statutes effective July 1, 2011, after the CLEC application was received. Pursuant to 364.33, Florida Statutes, the Commission no longer issues Certificates of necessity to provide CLEC services. However, existing certificates remain valid.

Discussion of Issues

Issue 1: Should the Commission cancel North County Communications Corporation's CLEC Certificate No. 8799 for the company's apparent failure to accurately disclose information in Docket No. 100389-TX, application for certificate to provide competitive local exchange telecommunications service by North County Communications Corporation?

Recommendation: Yes, the Commission should cancel North County Communications Corporation's CLEC Certificate No. 8799 for the company's apparent failure to accurately disclose information in Docket No. 100389-TX, application for certificate to provide competitive local exchange telecommunications service by North County Communications Corporation.
(Curry)

Staff Analysis: Section 364.335(2), Florida Statutes (F.S.), provides in part that the Commission shall grant a certificate of authority to provide telecommunications services 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.

Rule 25-24.810, F.A.C., Application for a Certificate, requires that an applicant for a certificate shall submit a completed Form PSC/RCP 8 (5/08) entitled "Application Form for Authority to Provide Competitive Local Exchange Service Within the State of Florida," and is incorporated into this rule by reference.

As stated in the Case Background, after the Commission granted North County authority to provide competitive local exchange services, North County notified staff that there was a problem with the company's CLEC application. Since informing staff of the omissions and errors on the company's application, North County has worked with staff to resolve the matter and has amended its application. The amendments to the CLEC application corrected the errors and included the information that was previously omitted. Although, North County has worked with staff to resolve the matter at hand and has vowed to ensure that the company will remain in compliance with the Commission's rules in the future, staff believes that the company's prior violations and cancellation, along with the company's errors and omissions on its August 2010 CLEC application, demonstrate that North County does not have the managerial capability to operate and maintain a certificate of necessity in Florida.

In addition, when staff attempted to work with the company to obtain payment for its 2009 RAF and to avoid cancellation of its previous CLEC certificate, North County's representative's actions proved to be intentionally misleading. North County's representative stated numerous times that the check for the company's RAF payment was mailed; however, the check was never received. Further, North County has indicated in its correspondence with staff that the company has not been as diligent with ensuring that it remains in compliance within states in which it is not operational in as it has with states in which the company is operational. North County is currently not operational in Florida and it does not have plans to begin operations this year.

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Staff believes that because North County has not placed the same importance on ensuring compliance in Florida (a state in which the company is non-operational) as it has on ensuring compliance in other states in which the company is operational, that North County has neglected its obligation to maintain consistent compliance of the Commission's rules. Additionally, CLEC Certificate No. 8799 was granted to North County based on erroneous information provided by the company which was in violation of the Commission's rules. Since the information originally provided was inaccurate, and North County has demonstrated a pattern of seemingly deceptive practices, as evident by prior Commission actions, staff believes that the company has not met the managerial capability requirement of Section 364.335, F.S. to operate as a CLEC. Therefore, CLEC Certificate No. 8799 should be cancelled.

Accordingly, staff recommends that the Commission cancel North County Communications Corporation's CLEC Certificate No. 8799 for the company's apparent failure to accurately disclose information in Docket No. 100389-TX, application for certificate to provide competitive local exchange telecommunications service by North County Communications Corporation.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will 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 North County fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If North County's CLEC Certificate No. 8799 is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing local exchange telecommunications services in Florida. This docket shall be closed upon issuance of the Consummating Order. **(Robinson)**

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