

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

Staff of the Public Service Commission	)	
of the State of Missouri	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. TC-2006-0184
	)	
New Florence Telephone Company	)	
	)	
Respondent.	)	

**STIPULATION AND AGREEMENT**

As a result of discussions among the Complainant Staff of the Missouri Public Service Commission (Staff), the Office of the Public Counsel (OPC), the Respondent New Florence Telephone Company (New Florence) and the indirect owners of New Florence, Robert Williams,<sup>1</sup> and Local Exchange Company, LLC<sup>2</sup> (individually, Party; collectively, Parties), the Parties hereby submit the following Stipulation and Agreement (Agreement) to the Missouri Public Service Commission (Commission) for approval.

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<sup>1</sup> Robert Williams is signing this Stipulation and Agreement solely in his individual and proprietary capacities. In doing so, he does not consent to or concede the jurisdiction of the Commission over his person.

<sup>2</sup> Although LEC is a party to this Stipulation and Agreement, LEC does not alter or waive its contention that it is not subject to the Commission's regulatory supervision and does not, by virtue of signing this agreement, consent or concede to the jurisdiction of the Commission over LEC's business or its members.

## **I. BACKGROUND**

New Florence is a “telecommunications company” and “public utility” as those terms are defined in §386.020 RSMo.<sup>3</sup> As such, New Florence is subject to the supervision and control of the Commission as provided by law in Chapters 386 and 392 RSMo.

In the last half of 2004, Staff began an informal investigation of New Florence as a result of allegations in the press of criminal activity involving Kenneth Matzdorff. Thereafter, on January 14, 2005, the Commission established a case (MoPSC Case No. TO-2005-0237) and directed Staff to investigate all matters pertaining to the impact of the alleged criminal activity on Missouri utility customers, including the customers of New Florence. In addition, the Commission authorized Staff to file a complaint(s) on any matters contained within the scope of the investigation.

On October 25, 2005, Staff filed a Complaint against New Florence. The Commission opened this case for the Complaint. In its Complaint, Staff sought for the Commission to authorize the Commission’s General Counsel to seek penalties against New Florence. On November 23, 2005, New Florence filed its Answer and affirmative defenses.

Staff filed a Proposed Procedural Schedule on January 3, 2006, and New Florence filed its concurrence in Staff’s proposal the following day. On January 5, 2006, the Commission issued its Order Adopting Procedural Schedule. Among other things, the Order scheduled events culminating in an evidentiary hearing of two days to commence on May 10, 2006.

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<sup>3</sup> RSMo. 2000 or RSMo. Supp. 2005, unless otherwise noted.

On March 24, 2006, Staff and New Florence filed a Joint Motion for Suspension of Procedural Schedule and Motion for Expedited Treatment (Joint Motion) requesting the Commission to allow the Parties to explore settlement without the distraction and burden of simultaneously committing substantial effort and expense to preparing for an evidentiary hearing.

On March 28, 2006, the Commission granted the Joint Motion.

## **II. DEFINITIONS**

The Signatory Parties, for purposes of this Agreement, agree to the following definitions:

**A. Closing Date:** The date the sale of New Florence's ownership interests or assets to a successor in interest closes. The Closing Date shall not precede the Effective Date.

**B. Effective Date:** The latter of the date the Commission makes an order approving this Agreement without modification effective or the date the Commission denies a motion to rehear such an order. The Effective Date shall precede or be contemporaneous with the Closing Date.

**C. Investigation:** Staff's investigation of New Florence immediately before, during and after Case No. TO-2005-0237.

**D. Potential Enforcement Complaints:** All potential complaints for penalties that the Staff could have brought against New Florence for violations of statute or Commission Rule where the act or omission that would underlie the complaint occurred or commenced before January 1, 2006.

### **III. THE AGREEMENT**

#### **A. Payments to Public School Fund**

##### **1. Payment**

New Florence shall pay on Friday, December 29, 2006, or upon the Closing Date, whichever occurs first, the sum of One Hundred Thousand Dollars (\$100,000) to the Public School Fund (Fund). The payment shall not be ratepayer funded. This prohibition on ratepayer funding of the payment means that this payment shall be deemed an expense and obligation of the owners and any person or entity with a direct or indirect ownership interest in New Florence and shall not be payable as an allowed expense or obligation that is properly recoverable from ratepayers (commonly referred to as an expense "above the line").

##### **2. Contingent Additional Payment**

If New Florence fails to meet the filing deadline provided for in § III.B.2., it shall pay to the Fund the additional amount of Two Hundred and Fifty Thousand Dollars (\$250,000) on Tuesday, October 3, 2006, unless Staff and OPC both agree in writing to extend the payment deadline. If made, the payment shall not be ratepayer funded.

#### **B. Sale of New Florence**

##### **1. New Ownership**

New Florence shall pursue sale of New Florence, which may be accomplished by sale of the ownership or assets of New Florence, to a *bona fide*, independent, third-party purchaser acceptable to Staff and OPC, which acceptance shall not be unreasonably withheld.

2. Timing of Sale Application

New Florence, with other proper parties, shall file an application for Commission approval of the sale of ownership or assets contemplated by § III.B.1. by not later than 5:00 p.m. Monday, October 2, 2006, unless Staff and OPC both agree in writing to extend the date by which the application must be filed.

**C. Certification of New Florence for Receipt of USF Funds**

When New Florence has implemented sufficient financial and managerial controls to justify certification of New Florence for receipt of federal Universal Service Fund (USF) disbursements, *i.e.*, the management is independent, has no relationship or ties to current owners and has sufficient knowledge and skill to be acceptable to Staff, Staff will recommend to the Commission that the Commission certify to the Federal Communications Commission (FCC) that, prospectively, New Florence will use funds received from the federal high cost support funding mechanisms in accordance with Section 254(e) of the federal Telecommunications Act of 1996 (47 USC §254(e) 1999). If there is a pending sale of New Florence and Staff is satisfied the potential new owner will implement sufficient financial and managerial controls to justify certification for receipt of federal Universal Service Fund (USF) disbursements, Staff will recommend to the Commission that, if the sale closes, the Commission certify to the FCC the buyer will use funds received from the federal high cost support funding mechanisms in accordance with Section 254(e) of the federal Telecommunications Act of 1996 (47 USC §254(e) 1999).

#### **D. Adjustments to Books of Account**

The Parties agree that New Florence shall adjust its 2005 books and records by making the correcting entries to its accounts as set forth in Attachment 1, affixed hereto and incorporated by reference. The adjustment of New Florence's 2005 books and records as set forth in Attachment 1 will represent an accurate valuation of New Florence's telephone plant in service and depreciation reserve accounts for that period by eliminating the percentage increases Local Exchange Company (LEC) included in the administrative charges it made to New Florence as set out in Count 1 of the Complaint. The agreed to correcting entries eliminate all the current effects of the transactions Staff alleges are improper in its Complaint filed in this case. The inclusion of amounts paid to New Florence's owners/officers as salary expense or outside services expense in the 2005 annual report is not a concession by the Staff that such items were booked appropriately for regulatory or financial accounting purposes. Such 2005 costs were not specifically addressed in the Staff's Complaint.

The Parties agree that New Florence need not restate New Florence's annual reports to the Commission for years prior to 2005. Instead, New Florence shall supplement each annual report for the years 2001, 2002, 2003 and 2004 with a statement noting that there are inaccuracies and refer the reader to the 2005 New Florence Annual Report. The 2005 New Florence Annual Report shall contain a statement regarding the corrections contained in this report relative to inaccuracies contained in the 2001-2004 Annual Reports.

#### **E. Customer Credits**

New Florence, or its successor if the Closing Date precedes issuance of the customer credit, will issue a credit in the amount of fifty dollars (\$50) per access line to each customer of New Florence (other than New Florence, LEC, LLC and any owner or officer, current or former, of New Florence or LEC, LLC) who is paying the full tariff rate for and receiving basic local telecommunications service in Missouri from New Florence on the date this Agreement is filed with the Commission for approval. Customers entitled to the credit shall receive it on the earlier of thirty (30) days after the Closing Date or Friday, December 29, 2006. If a customer entitled to the credit discontinues receiving service from New Florence, or the successor if applicable, before receiving the customer credit, New Florence or its successor, as applicable, shall, in lieu of the credit, issue to that former customer a check in the amount of the credit due, less any amounts that might be due and owing to New Florence or its successor, as applicable, by that customer and mail the check to the customer's last known billing address. Within sixty (60) days of the latter of the date the credits are applied or checks issued, New Florence or its successor, as applicable, shall pay to **North East Community Action Corporation**, 16 North Court Street, PO Box 470, Bowling Green, MO 63334-0470, an amount equivalent to all uncashed checks for use in funding that agency's low-income housing energy assistance program. New Florence's existing rate schedules do not require revision to implement this aspect of the Agreement. Within eighty (80) days of the latter of the date the credits are applied or checks issued, the Executive Director of the Commission must receive from New Florence or its successor, as applicable, a report that shows (1) the credits issued, (2) the checks issued in lieu of credits, (3) any offsets made

to checks issued and (4) the amount paid to the **North East Community Action Corporation**.

**F. Rate Moratorium**

No Party shall file a general rate increase or earnings complaint case concerning New Florence or its successor before two years after (i) the Closing Date or (ii) December 29, 2006, whichever first occurs, unless a significant, unusual event that has a major impact on New Florence or its successor, as applicable, occurs, an event such as:

- (a) terrorist activity or an act of God;
- (b) a significant change in federal or Missouri state tax law;
- (c) a significant change in federal or Missouri state utility laws or legislation affecting telephone companies; or
- (d) fraud, misrepresentation or nondisclosure of material matters relating to the finances or operations of New Florence.

and, further, any rate adjustment resulting from any such rate increase or earnings complaint case will not become effective until at least six (6) months after a rate increase or rate complaint case is filed; provided that, nothing herein is intended to limit the exercise of the authority the Commission has under Section 386.390 RSMo on its own motion. This provision would not preclude the filing of revised tariffs and rates that are revenue neutral to New Florence or its successor

**G. Rate of Return Regulation**

New Florence agrees, and its successor must agree, not to seek a status where it is not subject to rate-of-return regulation until after a Commission order is effective, final and non-appealable in a case where basic local telecommunications service rates in Missouri for New Florence or its successor, as applicable, are reviewed by the



Commission; therefore, until then New Florence or its successor, as applicable, shall not seek competitive classification under §392.361 RSMo 2000 or price cap status or competitive status under §392.245 RSMo Supp. 2005 or under any other statute. New Florence consents to inclusion of this obligation as a condition of the sale of New Florence and agrees its successor must also agree to this obligation as a sale condition.

**H. Satisfaction of Complaint and Potential Enforcement Complaints**

Each count of the Complaint filed in this case is satisfied. Each Potential Enforcement Complaint is satisfied. Therefore, no additional enforcement complaints against New Florence will be filed, initiated or otherwise pursued. Without limiting the foregoing, this Agreement resolves and settles for all time all pending or unfiled actions for any penalty or forfeiture under or by virtue of the Public Service Commission Law, including those which may be brought by third parties, for or on account of any act, transaction, matter or thing, known or unknown, concerning the subject matter of the Complaint and the Investigation against New Florence, its successors, assigns, partners, agents, managers, officers and employees and to forever release each and all of them from any punitive adverse action associated with the matters alleged in the Complaint or which have been examined in the context of the Investigation involving New Florence.

**I. The Agreement is in the Public Interest**

The terms of the Agreement are in the public interest and should be approved by the Commission. The Agreement resolves the pending Complaint, Potential Enforcement Complaints, and a potential earnings complaint that would likely to lead to protracted litigation on a number of issues which can better be addressed in the manner set forth in this Agreement. Resolution of these matters will facilitate sale of New

Florence, including devoting resources to finding a suitable buyer, and allow New Florence to concentrate on providing safe, reliable and affordable telecommunications service.

#### **IV. GENERAL PROVISIONS**

**A. Reliance on Certain Representations:** The Parties enter into this Agreement in reliance upon information provided to them by New Florence and LEC. If the Commission finds New Florence, its officers or employees or LEC failed to provide the Staff with material and relevant information in the possession of either of them or if the Commission finds New Florence, its officers or employees or LEC misrepresented facts material and relevant to this Agreement, this Agreement shall immediately terminate.

**B. Effective Date of the Agreement:** This Agreement shall become effective upon Commission approval without modification by final Commission order. Such order becomes "final" on its Effective Date defined in §II.B.

**C. Contingent Waiver of Rights:**

(1) This Agreement has resulted from extensive negotiations among the Parties and the terms hereof are interdependent. If the Commission does not adopt this Agreement in total and without modification, then this Agreement shall be void and no Party shall be bound by any of the agreements or provisions hereof.

(2) This Agreement is being entered into for the purpose of disposing of all issues in this case and the matters specifically addressed in this Agreement. None of the Parties to this Agreement shall be deemed to have approved, accepted, agreed, consented or acquiesced to any ratemaking principle or procedural principle, including,

without limitation, any method of cost determination or cost allocation or revenue related methodology, and none of the Parties shall be prejudiced or bound in any manner by the terms of this Agreement in this or any other proceeding, whether this Agreement is approved or not, except as otherwise expressly specified herein.

(3) If the Commission does not unconditionally approve this Agreement without modification, and notwithstanding its provision that it shall become void, neither this Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Party has for a decision in accordance with Section 536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Signatory Parties shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

(4) If the Commission accepts the specific terms of this Agreement, the Parties waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.070(2), RSMo 2000 to call, examine and cross-examine witnesses; their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 2000; their respective rights to

seek rehearing pursuant to Section 386.500 RSMo 2000 and their respective rights to judicial review pursuant to Section 386.510 RSMo 2000. These waivers apply only to a Commission order respecting this Agreement issued in a proceeding for Commission review of this Agreement, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

(5) All Parties understand and agree that the provisions of this Agreement relate only to the matters specifically referred to in the Agreement and no Party waives any claim or right which it otherwise may have with respect to any matters not expressly provided for in this Agreement.

**D. Integration:** This Agreement contains the entire agreement of the Parties concerning the issues addressed in this Agreement.

## V. COMMISSION APPROVAL OF THE AGREEMENT

**A.** The Staff shall file with the Commission suggestions or a memorandum in support of this Agreement. New Florence and OPC shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) business days of receipt of the Staff's memorandum, a responsive memorandum, which shall also be served on all other Parties. The contents of any suggestions or memorandum provided by any Party are its own, are not acquiesced in or otherwise adopted by the other Parties, whether or not the Commission approves and adopts this Agreement.

**B.** The Staff shall also have the right to provide, at any Agenda meeting at which this Agreement is noticed to be considered by the Commission, whatever oral

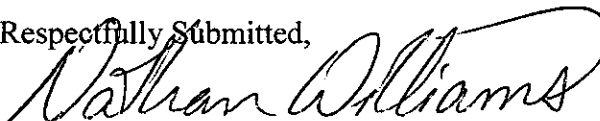
explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide other Parties with advance notice when the Staff shall respond to the request once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

**D.** To assist the Commission in its review of this Agreement, the Parties also request the Commission advise them of any additional information the Commission may desire from them relating to the matters addressed in this Agreement, including any procedures for furnishing such information to the Commission.

**E.** When approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Parties. The Parties shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

**WHEREFORE**, for the following reasons, the undersigned Parties respectfully request the Commission to issue an order in this case approving the Agreement subject to the specific terms and conditions contained therein.

Respectfully Submitted,



Nathan Williams #35512

Senior Counsel

Missouri Public Service Commission

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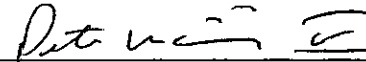
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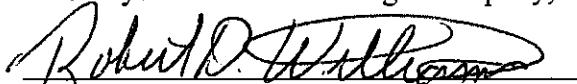
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Robert Williams  
In his Individual Capacity

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by electronic mail, first class mail or by hand delivery, on this 2<sup>nd</sup> day of June, 2006 to all parties of record.

Nathan Williams

## Attachment 1

New Florence Telephone Company

Case No.

### Adjusting Journal Entries - LEC, LLC Charges in Prior Years

Account	Description	Debit	Credit
<b>Accumulated Depreciation</b>			
		\$	
3122.120	Digital Electric Switch Circuit Equipment - Toll	197.29	
3122.322	Carrier	76.34	
3124.211	Aerial Cable - Metal	16.30	
3124.213	Aerial Cable - Drop	6.25	
3124.221	Buried Cable - Metal	302.43	
3124.233	Buried Cable - Drop	180.33	
4550.100	Retained Earnings	4253.17	
<b>Telephone Plant in Service</b>			
2212.000	Digital Electric Switch Circuit Equipment - Toll		\$1,367.48
2232.200	Carrier		510.38
2421.100	Aerial Cable - Metal		80.49
2421.300	Aerial Cable - Drop		30.84
2423.100	Buried Cable - Metal		2016.6
2423.300	Buried Cable - Drop		1026.32
			<hr/>
		<u>\$5,032.11</u>	<u>\$5,032.11</u>

Adjustment to exclude prior years LEC charges.