



Public Service Commission  
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: SEPTEMBER 19, 2002  
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)  
FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji* *MD*  
OFFICE OF THE GENERAL COUNSEL (ELLIOTT; W. KNIGHT; TEITZMAN; DODSON) *AT* *LAD* *WDK* *JHE* *PK*  
RE: CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALEC CERTIFICATE FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

- DOCKET NO. 020599-TX - BUDGET COMM
- DOCKET NO. 020601-TX - EUREKA TELECOM, L.L.C.
- DOCKET NO. 020602-TX - EVOLUTION NETWORKS SOUTH, INC.
- DOCKET NO. 020605-TX - SOAPSTONE TELECOM LLC
- DOCKET NO. 020620-TX - DIRECT2INTERNET CORP.
- DOCKET NO. 020623-TX - DAVID A. MCGUIRE D/B/A SIMPLY COMMUNICATIONS
- DOCKET NO. 020625-TX - LYXOM, INC.

AGENDA: 10/01/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020599.RCM

CASE BACKGROUND

The Division of the Commission Clerk & Administrative Services mailed each of the certificated telecommunications providers listed on Attachment A the 2001 Regulatory Assessment Fee (RAF) notice. When full payment had not been received by the due date, the Office of the General Counsel mailed a delinquent notice to the companies

DOCUMENT NUMBER-DATE

09960 SEP 18 02

FPSC-COMMISSION CLERK

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via certified mail. As of September 3, 2002, none of the companies  
have paid the past due amount.

The Commission is vested with jurisdiction over this matter  
pursuant to Sections 364.336, 364.285, and 364.337, Florida  
Statutes. Accordingly, staff believes the following  
recommendations are appropriate.

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission impose a \$500 penalty or cancel each company's respective certificate as listed on Attachment A for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

**RECOMMENDATION:** Yes. The Commission should impose a \$500 penalty or cancel each company's respective certificate as listed on Attachment A if the penalty and the regulatory assessment fees, including statutory penalty and interest charges, are not received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the penalty and regulatory assessment fees, including statutory penalty and interest charges, are not received, the certificate numbers listed on Attachment A should be cancelled administratively and the collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. If a company's certificate, as listed on Attachment A, is cancelled in accordance with the Commission's Order from this recommendation, the respective company should be required to immediately cease and desist providing alternative local exchange services in Florida. (Isler; Elliott; W. Knight; Teitzman; Dodson)

**STAFF ANALYSIS:** Pursuant to Section 364.285, Florida Statutes, the Commission may impose a penalty or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.820, Florida Administrative Code, establishes the requirements for cancellation of a certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

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The Division of the Commission Clerk & Administrative Services' records show that each of the telecommunications providers listed on Attachment A had not paid their 2001 regulatory assessment fees, plus statutory penalty and interest charges. Therefore, it appears the companies have failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, and have not requested cancellation of their respective certificates in compliance with Rule 25-24.820, Florida Administrative Code. The penalty amount recommended in these dockets is consistent with amounts imposed for recent, similar violations.

Accordingly, staff recommends that the Commission assess a \$500 penalty for failure to comply with the Commission rules or cancel each company's respective certificate as listed on Attachment A if the penalty and the regulatory assessment fees, along with statutory penalty and interest charges, are not paid within fourteen (14) calendar days after the issuance of the Consummating Order. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the penalty and regulatory assessment fees, including statutory penalty and interest charges, are not received, the certificate numbers listed on Attachment A should be cancelled administratively and the collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. If a company's certificate, as listed on Attachment A, is cancelled in accordance with the Commission's Order from this recommendation, the respective company should be required to immediately cease and desist providing alternative local exchange services in Florida.

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**ISSUE 2:** Should these dockets 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. The dockets should then be closed upon receipt of the penalty and fees or cancellation of each company's respective certificate. A protest in one docket should not prevent the action in a separate docket from becoming final. (Elliott; W. Knight; Teitzman; Dodson)

**STAFF ANALYSIS:** Whether staff's recommendation on Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, these dockets should be closed upon receipt of the penalty and fees or cancellation of each company's respective certificate. A protest in one docket should not prevent the action in a separate docket from becoming final.

## ATTACHMENT A

DOCKET NOS. 020599-TX, 020601-TX, 020602-TX, 020605-TX, 020620-TX,  
 020623-TX, 020625-TX  
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<u>DOCKET NO.</u>	<u>PROVIDER LAST REPORTED REVENUES &amp; PERIOD COVERED</u>	<u>CERT. NO.</u>	<u>RAFs</u>	<u>P and I</u>
020599-TX	Budget Comm \$0 Revenues for Period Ended 12/31/00	7631	2001	2001
020601-TX	Eureka Telecom, L.L.C. \$0 Revenues for Period Ended 12/31/00	7653	2001	2001
020602-TX	Evolution Networks South, Inc. \$0 Revenues for Period Ended 12/31/00	7668	2001	2001
020605-TX	Soapstone Telecom LLC No Previous Return Filed	7728	2001	2001
020620-TX	Direct2Internet Corp. \$0 Revenues for Period Ended 12/31/00	7636	2001	2001
020623-TX	Simply Communications No Previous Return Filed	7716	2001	2001
020625-TX	Lyxom, Inc. No Previous Return Filed	7762	2001	2001