



Public Service Commission

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RECORDS AND REPORTING

DATE: FEBRUARY 22, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *PI*
DIVISION OF LEGAL SERVICES (BANKS) *FRB*

RE: DOCKET NO. 001458-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALEC CERTIFICATE NO. 6048 ISSUED TO EVERETT L HEARD D/B/A ABC CONNECT FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 03/06/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001458.RCM

CASE BACKGROUND

- 04/17/99 - This company obtained Florida Public Service Commission Certificate No. 6048.
- 12/08/99 - The Division of Administration mailed the 1999 Regulatory Assessment Fee (RAF) notice. Payment was due January 31, 2000.
- 02/29/00 - The Division of Administration mailed the delinquent notice.
- 10/30/00 - Staff wrote the company and explained that a docket had been established and to contact the Commission if it was interested in resolving this docket.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

- **11/01/00** - Mr. Everett L. Heard, owner, called staff and stated that he has not started operations yet, therefore, he should not have to pay the RAF, and certainly no penalty. He requested that his application fee be refunded. He stated that he would then reapply for a certificate when he did go into business. Staff explained that the application fee was nonrefundable and that the RAF is owed whether or not he begins operations. Mr. Heard requested that his options and the 1999 RAF return be sent to him. This information was mailed to him the same date.
- **12/12/00** - The Division of Administration mailed the 2000 RAF return. Payment was due by January 30, 2001.
- **02/14/01** - As of this date, the company has not paid the past due RAF, including penalty and interest charges, or recontacted staff. In addition, the 2000 fee is now past due and has not been paid.

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.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$500 fine or cancel Everett L. Heard d/b/a ABC Connect's certificate for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel the company's certificate if the fine and the regulatory assessment fees, including statutory penalty and interest charges, are not received by the Commission within five business days after the issuance of the Consummating Order. The fine 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 fine and regulatory assessment fees, including statutory penalty and interest charges, are not received, the company's Certificate No. 6048 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. (Isler)

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine 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.

The Division of Administration's records showed that the company had not paid its 1999 regulatory assessment fee, plus statutory penalty and interest charges; therefore, this docket was established. The company's owner, Mr. Everett L. Heard, contacted staff and stated he did not believe he should have to pay the RAF since he was not yet in business. He then requested that his options be sent to him, along with the 1999 RAF return. This information was mailed to him on November 1, 2000. As of February 14, 2001, the company has not paid the 1999 RAF, including statutory penalty and interest charges, or proposed a settlement. In addition, the 2000 RAF is now past due and the Commission has not received the company's payment for the 2000 fee. Therefore, it appears the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies and has not requested cancellation of its certificate in compliance with Rule 25-24.820, Florida Administrative Code. The recommended fine amount is consistent with amounts used for recent, similar violations.

Accordingly, staff recommends that the Commission assess a \$500 fine for failure to comply with the Commission rules or cancel the company's certificate if the fine and the regulatory assessment fees, along with statutory penalty and interest charges, are not paid within five business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public

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 fine and regulatory assessment fees, including statutory penalty and interest charges, are not received, the company's Certificate No. 6048 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.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. 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 docket should then be closed upon receipt of the fine and fees or cancellation of the certificate. (Banks)

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, this docket should be closed upon issuance of a Consummating Order and upon receipt of the fine and fees or cancellation of the certificate.