

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

DATE: JUNE 28, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *PIJ* *MD*
DIVISION OF LEGAL SERVICES (BANKS) *FLB* *bc*

RE: DOCKET NO. 001485-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 7160 ISSUED TO CAT COMMUNICATIONS INTERNATIONAL, INC. FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 07/10/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001485.RCM

CASE BACKGROUND

- **10/15/99** - This company was granted Florida Public Service Commission Alternative Local Exchange Carrier Certificate No. 7160.
- **12/08/99** - The Division of Administration mailed the 1999 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 31, 2000.
- **02/29/00** - The Division of Administration mailed the delinquent notice for the 1999 RAF.

(substitute)
DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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- **10/30/00** - Staff wrote the company a letter explaining that a docket had been established for nonpayment of the 1999 RAF and to contact staff if it was interested in resolving this docket.
- **11/13/00** - Ms. Patricia M. Spencer, Vice President of Operations and Regulatory, called staff and requested the 1999 RAF return form and the company's options. This information was faxed to the company on the same date.
- **11/30/00** - The Commission received payment of the 1999 RAF, including penalty and interest charges except for \$0.50. The company reported no revenues for the period ended December 31, 1999. In addition, the company proposed a settlement.
- **12/07/00** - Staff called Ms. Spencer and explained staff could not recommend acceptance of its settlement proposal as it was not consistent with prior Commission decisions.
- **12/12/00** - The Division of Administration mailed the 2000 RAF return notice. Payment was due by January 30, 2001.
- **12/26/00** - The Commission received the company's amended settlement proposal.
- **01/11/01** - Staff faxed the company a note explaining that a waiver of objection statement should be included in the company's settlement proposal.
- **02/15/01** - Staff faxed Ms. Spencer a note explaining that as of this date, the waiver of objection statement still had not been received. In addition, staff advised that the 2000 RAF was now past due and it would have to be paid before staff could recommend acceptance of the company's settlement offer.
- **02/16/01** - Staff received the waiver of objection statement via fax from the company. The letter also stated that it was enclosing the 2000 RAF, including penalty and interest charges. The Commission did not receive the hard copy (original).
- **02/21/01** - The Division of Administration mailed the delinquent notice for the 2000 RAF.

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- **02/28/01** - The Commission received payment for the 2000 RAF for the company's interexchange carrier certificate, but it did not include payment for its alternative local exchange carrier certificate, which is the subject of this docket. In addition, the waiver of objection letter was not included.
- **04/02/01** - Staff faxed a note to Ms. Spencer and explained that unless the 2000 RAF, including past due penalty and interest charges, was received by April 23, 2001, staff would recommend denying the company's settlement proposal.
- **04/26/01** - As of this date, the company has not paid the 2000 RAF, including past due statutory penalty and interest charges.

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 accept the settlement offer proposed by CAT Communications International, Inc. to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: No. The Commission should not accept the company's settlement offer, which proposed to pay a \$100 contribution and future regulatory assessment fees on a timely basis. Instead, 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. 7160 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 subsequently paid the 1999 RAF, including all of the penalty and interest charges except for \$0.50. Although Ms. Patricia M. Spencer, Vice President of Operations and

Regulatory, proposed a settlement, it failed to include the waiver of objection statement. 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. This fine amount is consistent with amounts used for recent, similar violations.

Accordingly, staff recommends that the Commission should not accept the company's settlement offer, which proposed to pay a \$100 contribution and future regulatory assessment fees on a timely basis. Instead, 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. 7160 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.

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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.