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DATE: NOVEMBER 19, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *pij* *AD* *VMP*
DIVISION OF LEGAL SERVICES (K. PEÑA; B. KEATING; J. ELLIOTT) *JA* *BR*

RE: CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES, AND 25-24.835, F.A.C., RULES INCORPORATED.

- DOCKET NO. 011228-TX - DIALTEK, LLC D/B/A DTK TELECOMMUNICATIONS, LLC
- DOCKET NO. 011243-TX - JATO OPERATING TWO CORP.
- DOCKET NO. 011248-TX - ONE EZ CALL, INC.
- DOCKET NO. 011250-TX - QUESTEL CORP.
- DOCKET NO. 011277-TX - ASSET CHANNELS-TELECOM, INC.
- DOCKET NO. 011302-TX - BROADBAND DIGITAL TECHNOLOGIES, INC.
- DOCKET NO. 011318-TX - WORLDWIDE INTERNET SERVICES, INC.

AGENDA: 12/04/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\011228.RCM

CASE BACKGROUND

Each of the certificated providers listed on Attachment A were mailed the 2000 Regulatory Assessment Fee (RAF) notice. When

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FPSC-COMMISSION CLERK

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payment had not been received by the due date, the Division of the Commission Clerk & Administrative Services mailed a delinquent notice to the companies. The companies were also mailed a letter and asked to contact staff if interested in resolving their docket. As of November 7, 2001, none of the companies have paid the past due amount.

In addition, other correspondence to the companies listed on Attachment A was returned by the United States Postal Service (USPS).

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, 364.337, and 364.183, 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 fine or cancel each telecommunications 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 fine or cancel each company's respective certificate as listed on Attachment A 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 certificate numbers listed on Attachment A should be canceled 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 penalty and interest charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Staff was notified by the Division of the Commission Clerk & Administrative Services that each of the providers listed on Attachment A had not paid their 2000 regulatory assessment fees,

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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 certificates in compliance with Rule 25-24.820, Florida Administrative Code. The fine amount recommended in these dockets is consistent with amounts imposed for recent, similar violations.

Accordingly, staff recommends that the Commission assess a \$500 fine or cancel each company's respective certificate as listed on Attachment A 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 certificate numbers listed on Attachment A should be canceled 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 the Commission impose a \$500 fine or cancel each telecommunications company's respective certificate as listed on Attachment A for apparent violation of Rule 25-24.835, Florida Administrative Code, Rules Incorporated?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel each company's respective certificate as listed on Attachment A if the information required by Rule 25-24.835, Florida Administrative Code, Rules Incorporated, and fine 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 required information are not received, the certificate numbers listed on Attachment A should be canceled administratively. (Isler)

STAFF ANALYSIS: Pursuant to Rule 25-24.835, Florida Administrative Code, Rules Incorporated, each company is allowed ten days after a change occurs to file updated information indicating any changes in the certificate holder's address (including street name and address, post office box, city), telephone number and any change in the name and address of the individual who is serving as primary liaison with the Commission. Mail sent to each company listed on Attachment A was returned to the Commission by the USPS. It has been well over ten days and staff has not been informed of the providers' correct mailing addresses, phone numbers, or liaison information, nor have any of the companies listed on Attachment A requested cancellation of their certificate in compliance with Rule 25-24.820, Florida Administrative Code. The fine amount recommended in these dockets is consistent with amounts imposed for recent, similar violations.

Accordingly, staff recommends that the Commission assess a \$500 fine or cancel each company's respective certificate as listed on Attachment A if the information required by Rule 25-24.835, Florida Administrative Code, Rules Incorporated, and fine 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

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pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and required information are not received, the certificate numbers listed on Attachment A should be canceled administratively.

ISSUE 3: 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 fines, fees, and required information or cancellation of the certificate. A protest in one docket should not prevent the action in a separate docket from becoming final. (K. Peña; B. Keating; J. Elliott)

STAFF ANALYSIS: Whether staff's recommendation on Issues 1 and 2 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 fines, fees, and required information or cancellation of the certificate. A protest in one docket should not prevent the action in a separate docket from becoming final.

ATTACHMENT A

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| <u>DOCKET NO.</u> | <u>PROVIDER</u> <u>LAST REPORTED REVENUES & PERIOD COVERED</u> | <u>CERT.</u> <u>NO.</u> | <u>RAFs</u> | <u>P and I</u> |
|-------------------|---|----------------------------|-------------|----------------|
| 011228-TX | DTK Telecommunications, LLC 1999 Revenues - \$0 For the Period Ended 12/31/99 | 7209 | 2000 | 2000 |
| 011243-TX | JATO Operating Two Corp. 1999 Revenues - \$0 For the Period Ended 12/31/99 | 7127 | 2000 | 2000 |
| 011248-TX | One EZ Call, Inc. 1999 Revenues - \$0 For the Period Ended 12/31/99 | 7217 | 2000 | 2000 |
| 011250-TX | Questel Corp. 1999 Revenues - \$0 For the Period Ended 12/31/99 | 7270 | 2000 | 1999 2000 |
| 011277-TX | Asset Channels-Telecom, Inc. No Previous Return Filed | 7333 | 2000 | 2000 |
| 011302-TX | Broadband Digital Technologies, Inc. No Previous Return Filed | 7527 | 2000 | 2000 |
| 011318-TX | Worldwide Internet Services, Inc. No Previous Return Filed | 7614 | 2000 | 2000 |