

State of Florida



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 4, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER)
OFFICE OF THE GENERAL COUNSEL (MCKAY; ROJAS) vs M PR

RE: CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF CLEC
CERTIFICATE FOR VIOLATION OF RULE 25-4.0161, F.A.C.,
REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 09/16/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030622.RCM

RECEIVED: PSC
03 SEP -4 AM 10:30
COMMISSION
CLERK
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CASE BACKGROUND

This recommendation deals with the enforcement actions against competitive local exchange telecommunications companies (CLECs) for nonpayment of the Regulatory Assessment Fees (RAFs). Staff is recommending that first time offenders be penalized \$500 and the second time offender be penalized \$1,000.

In Issues 1 and 2 of this recommendation, staff identifies Rule 25-4.0161, Florida Administrative Code, as that apparently violated by the companies listed in the attachments. The rule is incorporated by Rule 25-24.835, Florida Administrative Code. To avoid redundancy, hereafter, the recommendation refers only to Rule 25-4.0161, Florida Administrative Code.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.337, Florida

DOCUMENT NUMBER-DATE

08243 SEP-4 03

REC'D-COMMISSION CLERK

DOCKET NOS. 030622-TX & OTHERS

DATE: SEPTEMBER 4, 2003

Statutes. The following docket numbers are addressed by this recommendation.

1st Time Offenders - Nonpayment of RAFs - \$500 Penalty

DOCKET NO. 030622-TX - SUN-TEL USA, INC.
DOCKET NO. 030624-TX - TELSOUTH COMMUNICATIONS, INC.
DOCKET NO. 030628-TX - BAYTEL COMMUNICATIONS, INC.
DOCKET NO. 030659-TX - DSL INTERNET CORPORATION D/B/A DSLI
DOCKET NO. 030660-TX - MYCOMP INS AGENCY CORP.
DOCKET NO. 030661-TX - CERISTAR, INC.
DOCKET NO. 030662-TX - INTERTOLL COMMUNICATIONS NETWORK
CORPORATION
DOCKET NO. 030663-TX - M/C SOUTHERN COMMUNICATIONS, INC.
DOCKET NO. 030672-TX - ADVENTIST HEALTH SYSTEM/SUNBELT, INC.
D/B/A FLORIDA HOSPITAL MEDICAL CENTER

2nd Time Offender - Nonpayment of RAFs - \$1,000 Penalty

DOCKET NO. 030620-TX - INTERCONTINENTAL COMMUNICATIONS GROUP,
INC. D/B/A FUSION TELECOM

DATE: SEPTEMBER 4, 2003

DISCUSSION OF ISSUES

1st Time Offenders - Nonpayment of RAFs - \$500 Penalty

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: The Commission should 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, 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. If a company does not protest the Commission's Order or the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, are not received, that company's certificate, as listed on Attachment A, should be cancelled administratively and the collection of the past due fees should be referred to the Florida Department of Financial Services 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 competitive local exchange services in Florida. (Isler; McKay)

STAFF ANALYSIS: Each of the telecommunications companies listed on Attachment A have not paid their 2002 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. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the obligation to pay Regulatory Assessment Fees, including statutory penalty and interest charges, if the certificate was active during any portion of the calendar year, including the year of cancellation.

DOCKET NOS. 030622-TX & OTHERS

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Accordingly, staff recommends that the Commission assess 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, 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. If a company does not protest the Commission's Order or the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, are not received, that company's certificate, as listed on Attachment A, should be cancelled administratively and the collection of the past due fees should be referred to the Florida Department of Financial Services 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 competitive local exchange services in Florida.

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2nd Time Offender - Nonpayment of RAFs - \$1,000 Penalty

ISSUE 2: Should the Commission impose a \$1,000 penalty or cancel Intercontinental Communications Group, Inc. d/b/a Fusion Telecom's CLEC Certificate No. 5799, as listed on Attachment B, for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: The Commission should impose a \$1,000 penalty or cancel Intercontinental Communications Group, Inc. d/b/a Fusion Telecom's CLEC Certificate No. 5799, as listed on Attachment B, for apparent violation of Rule 25-4.0161, Florida Administrative Code, 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. If the company does not protest the Commission's Order or the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, are not received, the company's certificate, as listed on Attachment B, should be cancelled administratively and the collection of the past due fees should be referred to the Florida Department of Financial Services for further collection efforts. If the company's certificate, as listed on Attachment B, is cancelled in accordance with the Commission's Order from this recommendation, Intercontinental Communications Group, Inc. d/b/a Fusion Telecom should be required to immediately cease and desist providing competitive local exchange services in Florida. (Isler; Rojas)

STAFF ANALYSIS: Intercontinental Communications Group, Inc. d/b/a Fusion Telecom has not paid its 2002 Regulatory Assessment Fee, plus statutory penalty and interest charges, and has a history of late payments. The company's certificate became effective March 25, 1999, and has paid the RAF after the due date each year. In addition, another docket was established for nonpayment of the RAF. Docket No. 001460-TX was established on September 25, 2000, for nonpayment of the 1999 RAF. On May 3, 2001, Order No. PSC-01-1059-AS-TX was issued, which accepted the company's \$100 settlement proposal. In its settlement offer, the company proposed to pay future RAFs in a timely manner. The company subsequently paid the \$100 settlement, and the docket was closed. Therefore, it appears Intercontinental Communications Group, Inc. d/b/a Fusion Telecom has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, and

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is not in compliance with its previous settlement proposal. The penalty amount recommended in this docket is consistent with amounts imposed for recent, similar violations. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the obligation to pay Regulatory Assessment Fees, including statutory penalty and interest charges, if the certificate was active during any portion of the calendar year, including the year of cancellation.

Accordingly, staff recommends that the Commission assess a \$1,000 penalty or cancel Intercontinental Communications Group, Inc. d/b/a Fusion Telecom's CLEC Certificate No. 5799, as listed on Attachment B, for apparent violation of Rule 25-4.0161, Florida Administrative Code, 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. If the company does not protest the Commission's Order or the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, are not received, the company's certificate, as listed on Attachment B, should be cancelled administratively and the collection of the past due fees should be referred to the Florida Department of Financial Services for further collection efforts. If the company's certificate, as listed on Attachment B, is cancelled in accordance with the Commission's Order from this recommendation, Intercontinental Communications Group, Inc. d/b/a Fusion Telecom should be required to immediately cease and desist providing competitive local exchange services in Florida.

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ISSUE 3: Should these dockets be closed?

RECOMMENDATION: The Orders issued from these recommendations will become final upon issuance of Consummating Orders, 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 Orders. 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. (McKay; Rojas)

STAFF ANALYSIS: Whether staff's recommendations on Issues 1 and 2 are approved or denied, the result will be Proposed Agency Action Orders. If no timely protest to the Proposed Agency Actions are filed within 21 days of the date of issuance of the Orders, 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.

1st Time Offenders - Nonpayment of RAFs - \$500 Penalty

<u>Docket No.</u>	<u>Provider Last Reported Revenues & Period Ended</u>	<u>Cert. No.</u>	<u>RAF's</u>	<u>Penalty and Interest*</u>
030622-TX	Sun-Tel USA, Inc. \$0 Revenues 12/31/01	7126	2002	2002
030624-TX	TelSouth Communications, Inc. \$0 Revenues 12/31/01	7248	2002	2002
030628-TX	Baytel Communications, Inc. \$0 Revenues 12/31/01	7652	2002	2002
030659-TX	DSL Internet Corporation d/b/a DSLi \$0 Revenues 12/31/01	7941	2002	2002
030660-TX	MYCOMP INS AGENCY CORP. No Previous Return Filed	8026	2002	2002
030661-TX	CeriStar, Inc. No Previous Return Filed	8071	2002	2002
030662-TX	Intertoll Communications Network Corporation No Previous Return Filed	8075	2002	2002
030663-TX	M/C Southern Communications, Inc. No Previous Return Filed	8100	2002	2002
030672-TX	Adventist Health System/Sunbelt, Inc. d/b/a Florida Hospital Medical Center No Previous Return Filed	8213	2002	2002

*Years penalty and/or interest was not paid

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ATTACHMENT B

2nd Time Offender - Nonpayment of RAFs - \$1,000 Penalty

<u>Docket No.</u>	<u>Provider Last Reported Revenues & Period Ended</u>	<u>Cert. No.</u>	<u>RAFs</u>	<u>Penalty and Interest*</u>
030620-TX	Intercontinental Communications Group, Inc. d/b/a Fusion Telecom \$92,899 Revenues 12/31/01	5799	2002	2001 2002

*Years penalty and/or interest was not paid