

State of Florida



Public Service Commission

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

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COMMISSION
CLERK

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PSC

DATE: NOVEMBER 20, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *pic*
OFFICE OF THE GENERAL COUNSEL (CHRISTENSEN) *pic*

RE: DOCKET NO. 030686-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PATS CERTIFICATE NO. 2358 ISSUED TO TELALEASING ENTERPRISES, INC. FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 12/02/03 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030686.RCM

CASE BACKGROUND

- **09/12/89** - This company obtained Florida Public Service Commission Pay Telephone Certificate No. 2358.
- **12/02/98** - In a separate proceeding, Docket No. 981798-TC was established for violation of pay telephone service standards and nonpayment of the 1997 Regulatory Assessment Fee (RAF). On June 7, 1999, Order No. PSC-99-1134-AS-TC was issued, which accepted the company's settlement proposal to resolve this, and other dockets. The company paid the RAFs and settlement amount in full, and the docket was closed.
- **07/20/00** - In a separate proceeding, Docket No. 000897-TC was established for nonpayment of the July 1 through December 31,

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- 1999 RAF. The company paid the past due RAFs and proposed a settlement. On November 7, 2000, Order No. PSC-00-2110-AS-TC was issued, which accepted the company's settlement offer and the docket was closed.
- **04/09/01** - In a separate proceeding, Docket No. 010424-TC was established for nonpayment of the July 1 through December 31, 2000 RAF. The company subsequently paid the past due RAF and proposed a settlement. On July 3, 2001, Order No. PSC-01-1430-AS-TC was issued, which accepted the company's settlement proposal. The company paid the settlement amount and the docket was closed.
 - **06/11/02** - The Division of the Commission Clerk & Administrative Services mailed the January thru June 2002 RAF return notice. Payment was due by July 30, 2002.
 - **08/22/02** - The Office of the General Counsel sent a delinquent notice for nonpayment of the January thru June 2002 RAF via certified mail. The US Postal Service returned the certified receipt, which showed the delinquent notice was signed for and delivered on August 26, 2002.
 - **12/02/02** - The Division of the Commission Clerk & Administrative Services mailed the July thru December 2002 RAF return notice. Payment was due by January 30, 2003.
 - **02/21/03** - The Office of the General Counsel sent a delinquent notice for nonpayment of the July thru December 2002 RAF via certified mail. The US Postal Service returned the certified receipt, which showed the delinquent notice was signed for and delivered on February 24, 2003.
 - **03/19/03** - The Division of the Commission Clerk & Administrative Services notified staff that this company had not paid the 2002 RAF.
 - **05/21/03** - Staff wrote the company and explained that the RAF needed to be paid by June 13, 2003, to avoid an enforcement docket from being established.
 - **07/25/03** - Payment was not received; therefore, this docket was established.

- **10/22/03** - Staff filed its recommendation to cancel the company's pay telephone certificate since this was the fourth docket established for the same rule violation.
- **10/23/03** - The Commission received a letter, via fax, from Ms. Lin Harvey, Director of Regulatory Affairs, which requested this docket be deferred from the November 3, 2003, Agenda Conference, to allow the company an opportunity to present additional data and information to staff. In addition, Ms. Harvey advised that payment for the past due amount had been overnighted.
- **10/24/03** - The Commission received the company's payment for the 2002 RAF. For the period January 1 through June 30, 2002, the company reported revenues in the amount of \$2,399,470 and for the July 1 through December 31, 2002, period, the company reported revenues in the amount of \$2,516,567.
- **10/28/03** - The Commission received payment for the January 1 through June 30, 2003, RAF period. The company reported revenues in the amount of \$1,638,446.
- **11/03/03** - This docket was deferred from the November 3, 2003, Agenda Conference.
- **11/10/03** - The Commission received a letter from Telaleasing Enterprises, Inc.'s General Counsel, Ms. Tammy L. Martin, which proposed a settlement (Attachment A).

In Issue 1 of this recommendation, staff identifies Rule 25-4.0161, Florida Administrative Code, as that apparently violated by the company. The rule is incorporated by Rule 25-24.505, 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 364.3375, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Telaleasing Enterprises, Inc. to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within fourteen (14) calendar days from the date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Florida Department of Financial Services for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of the Commission Order, Certificate No. 2358 should be cancelled administratively. If Telaleasing Enterprises, Inc.'s certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing pay telephone services in Florida. **(Isler; Christensen)**

STAFF ANALYSIS: 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 late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of the Commission Clerk and Administrative Services notified staff that Telaleasing Enterprises, Inc. had not paid the 2002 RAF. Staff attempted to collect the fee prior to establishing a docket but was unsuccessful. Since this is the fourth docket established for nonpayment of the RAFs, staff originally filed a recommendation on October 22, 2003, to cancel the company's certificate. On October 24, 2003, at the company's request, this docket was deferred from the November 3, 2003 Agenda Conference. The same day, the Commission received the company's payment for the past due RAFs, including statutory late payment charges.

On November 10, 2003, the Commission received a letter from Telaleasing Enterprises, Inc.'s General Counsel, Ms. Tammy L. Martin, which is attached as Attachment A and incorporated by

reference. Ms. Martin's letter stated that the company's CEO, Mr. Woody McGee, has "...imposed strict performance requirements directly related to the timely filing of the regulatory report." According to the letter, the report must be submitted to Mr. McGee several weeks before its due date to ensure timely filing. The letter went on to state "Employees are subject to serious sanctions for noncompliance with this mandate, up to and including termination."

Ms. Martin stated that the company had taken additional steps to ensure that the Commission "...receives timely responses to all of its communications", which include changing the Commission liaison to the General Counsel and implementing a system that logs and tracks all Commission correspondence with appropriate internal due dates. The company offered to make a \$20,000 contribution to resolve this docket. Staff believes the recommended settlement amount is an appropriate amount since, to staff's knowledge, this is the first time a company has had four dockets established for the RAF rule violation.

Accordingly, staff believes the terms of the settlement agreement as summarized in this recommendation should be accepted. Any contribution should be received by the Commission within fourteen (14) calendar days from the date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Florida Department of Financial Services for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of the Commission Order, Certificate No. 2358 should be cancelled administratively. If Telaleasing Enterprises, Inc.'s certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing pay telephone services in Florida.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon receipt of the \$20,000 contribution or cancellation of the certificate.
(Christensen)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon receipt of the \$20,000 contribution or cancellation of the certificate.

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VIA FACSIMILE 850-413-6583 AND OVERNIGHT MAIL

November 7, 2003

Mr. Richard A. Moses
Chief, Bureau of Service Quality
Division of Competitive Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0866

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Dear Mr. Moses:

I would like to begin by expressing my sincere appreciation to you and other key staff members for taking the time to meet with Ms. Lin Harvey and Ms. Angela Green on behalf of Telaleasing Enterprises, Inc. ("Telaleasing" or the "Company") this week and for affording us the opportunity to work with you on the issues surrounding the late filing of our regulatory assessment report and the fees associated with the filing. Your feedback is very important to us, and we have taken your input into consideration in formulating the Company's response.

As was explained during the meeting, the Company relied upon designated employees to perform their assigned job responsibilities in a timely manner. Unfortunately, it appears that our reliance was misplaced and, accordingly, we did not meet the Commission's standards for timely filing. We are gravely concerned about this incident, and we understand the need for the Company to take appropriate corrective action to ensure that such an event does not occur in the future.

During this most recent meeting, you were provided with a copy of the memorandum from Mr. Woody McGee, CEO of the Company, addressed to our accounting department. In this memorandum, it is clear that Mr. McGee has imposed strict performance requirements directly related to the timely filing of the regulatory report. As you can see, Mr. McGee is personally calendaring this item and requiring the completed report to be on his desk, ready for filing with the Commission, several weeks in advance of its due date. Employees are subject to serious sanctions for noncompliance with this mandate, up to and including termination.

In addition to the actions set forth in Mr. McGee's memo, Telaleasing will be taking further steps to ensure that the Commission receives timely responses to all of its communications. The Company's Office of General Counsel will become the official point of

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contact (liaison of record) for all correspondence received from the Commission. In assuming this role, the General Counsel's Office will implement a system by which all Commission correspondence will be logged and tracked, with appropriate internal due dates assigned to meet required response deadlines.

Telaleasing prides itself on providing high quality public communications services to the public, as well as maintaining consistent compliance with all appropriate regulatory requirements and agencies. We sincerely regret this error. Although we genuinely believe that our oversight in this case was inadvertent, we recognize the seriousness of the issue and want to assure the Commission that management is making a personal commitment to ensure compliance with all Commission requirements. In recognition of the efforts expended by the staff in helping to bring this matter to resolution, Telaleasing will make a voluntary contribution of \$20,000.00 to the General Revenue Fund of the State of Florida, to be paid at such date as determined by the Commission.

Again, I wish to thank you and the other staff members for all of the assistance you have provided us. We look forward to continuing to work together in the future.

Best regards,

Telaleasing Enterprises, Inc.

A wholly owned subsidiary of Davel Communications, Inc.



Tammy L. Martin
General Counsel

Tim/mys

Cc: Woody McGee
Lin Harvey
Angela Green