

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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DATE: NOVEMBER 20, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) Pji
OFFICE OF THE GENERAL COUNSEL (ROJAS) AF D/L

RE: DOCKET NO. 030621-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF CLEC CERTIFICATE NO. 7012 ISSUED TO KINGTEL, 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\030621.RCM

CASE BACKGROUND

- **06/16/99** - This company obtained Florida Public Service Commission Competitive Local Exchange Telecommunications Company Certificate No. 7012.
- **06/25/02** - In a separate proceeding, Docket No. 020573-TX was established for nonpayment of the 2001 Regulatory Assessment Fee (RAF). On September 10, 2002, Order No. PSC-02-1244-PAA-TX was issued, which imposed a \$500 penalty or cancelled the company's certificate. The company subsequently paid the past due fee, including statutory late payment charges, and the \$500 penalty, and the docket was closed.
- **12/12/02** - The Division of the Commission Clerk & Administrative Services mailed the 2002 RAF notice. The due date was January 30, 2003.

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- **02/21/03** - The Office of the General Counsel sent a delinquent notice via certified mail. The US Postal Service returned the unopened delinquent notice stamped "unclaimed."
- **03/19/03** - The Division of the Commission Clerk & Administrative Services notified staff that this company had not paid the 2002 RAF.
- **04/11/03** - Staff wrote the company and explained that payment for the RAF needed to be paid by April 30, 2003, to avoid an enforcement docket from being established.
- **08/04/03** - Mr. Worlking Pierre, President, called staff and stated that he wished to keep his certificate active and requested that staff fax him the RAF return form and options for resolving this docket. The form and information were faxed on August 5, 2003.
- **09/04/03** - The Commission received payment for the 2002 RAF, including statutory late payment charges. The company reported no revenues for the period ended December 31, 2002.
- **10/31/03** - The Commission received the company's settlement proposal.

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 25-24.835, 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 Statutes. Accordingly, staff believes the following recommendations are appropriate.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by KingTel, 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 30 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. 7012 should be cancelled administratively. If KingTel, 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 competitive local exchange telecommunications services in Florida. **(Isler; Rojas)**

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.

After this docket was opened, but prior to staff filing a recommendation, the Commission received the company's payment for the outstanding Regulatory Assessment Fee, including statutory late payment charges, and a letter from the company which offered to pay a \$500 contribution to be paid within 30 days from the issuance of the Order accepting the settlement and proposed to pay future RAFs on a timely basis. In addition, the company's settlement proposal included a waiver of objection to the administrative cancellation of the company's certificate in the event the settlement proposal is accepted and the company ultimately fails to comply with the terms of its offer.

This is the second docket established for the same rule violation. On September 10, 2002, Order No. PSC-02-1244-PAA-TX was issued in Docket No. 020573-TX, which imposed a \$500 penalty or cancelled the company's certificate. The company subsequently paid

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the past due fee, including statutory late payment charges, and the \$500 penalty, and the docket was closed. The recommended settlement amount in this docket is consistent with amounts the Commission has accepted for recent, similar violations.

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 30 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. 7012 should be cancelled administratively. If KingTel, 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 competitive local exchange telecommunications services in Florida.

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 \$500 contribution or cancellation of the certificate. **(Rojas)**

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon receipt of the \$500 contribution or cancellation of the certificate.