

State of Florida



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

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COMMISSION  
CLERK

**DATE:** DECEMBER 23, 2003

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

**FROM:** DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Dji*  
OFFICE OF THE GENERAL COUNSEL (CHRISTENSEN) *ymc b/c* *MB*

**RE:** DOCKET NO. 030776-TI - CANCELLATION OF TARIFF AND REMOVAL FROM REGISTER BY FLORIDA PUBLIC SERVICE COMMISSION OF IXC REGISTRATION NO. TJ374 ISSUED TO NEXT COMMUNICATIONS, INC. FOR VIOLATION OF SECTION 364.336, FLORIDA STATUTES.

**AGENDA:** 01/06/04 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\030776.RCM

CASE BACKGROUND

- **10/19/00** - This company obtained Florida Public Service Commission Interexchange Telecommunications Registration No. TJ374.
- **08/09/01** - In a separate proceeding, Docket No. 011065-TI was established for nonpayment of the 2000 Regulatory Assessment Fee (RAF). On November 21, 2001, Order No. PSC-01-2288-PAA-TI was issued, which imposed a \$500 fine or removed the company's registration. The company responded to the Order by proposing a settlement and paying the past due fee, including statutory late payment charges. On February 22, 2002, Order No. PSC-02-0226-AS-TI was issued, which accepted the company's \$250 settlement. In addition, the company proposed to pay future RAFs on a timely basis. The company paid the \$250 contribution and the docket was closed.

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- **12/12/02** - The Division of the Commission Clerk & Administrative Services mailed the 2002 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 30, 2003.
- **02/21/03** - The Office of the General Counsel sent a delinquent notice via certified mail attempting collection of the 2002 RAF. The US Postal Service did not return the unopened delinquent notice or the certified receipt.
- **03/19/03** - The Division of the Commission Clerk & Administrative Services notified staff that this company had not paid the 2002 RAF.
- **04/28/03** - Staff wrote the company and explained that payment for the RAF needed to be paid by May 19, 2003, to avoid an enforcement docket from being established.
- **07/11/03** - Staff faxed the company a note requesting that payment for the 2002 RAF, including statutory late payment charges, be made.
- **08/07/03** - Payment was not received; therefore, this docket was established.
- **08/12/03** - The Commission received the company's payment for the minimum 2002 RAF, along with statutory late payment charges for the years 2001 and 2002. The company did not complete and send in the 2002 RAF return form so staff did not know the amount of the company's revenues, if any, for the year 2002.
- **08/13/03** - Staff faxed the company a note and the 2002 RAF return form and asked that it be completed.
- **11/20/03** - Staff wrote the company a letter and asked that the 2002 RAF return form be completed and explained that the company needed to resolve this docket by proposing a settlement or requesting cancellation.
- **12/01/03** - A representative from Next Communications, Inc. called staff and stated the company had gone through some personnel changes and had moved offices. The representative advised that the company wished to keep its registration active and would complete the 2002 return form. On December

2, 2003, staff faxed the information to the company explaining what needed to be done to resolve this docket.

- **12/08/03** - The Commission received the company's 2002 return form, along with full payment for the balance of the 2002 RAF, including statutory late payment charges. In addition, the company proposed a settlement. The company reported revenues in the amount of \$3,574,726 for the period ended December 31, 2002.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02, 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 Next Communications, Inc. to resolve the apparent violation of Section 364.336, Florida Statutes?

**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, the company's tariff should be cancelled and its name removed from the register administratively. In addition, the company should be required to immediately cease and desist providing intrastate interexchange services in Florida. If the company's tariff is cancelled and its name removed from the register, and subsequently decides to reapply for registration as an intrastate interexchange telecommunications company, the company should be required to first pay any outstanding RAF, including statutory late payment charges, and the contribution. **(Isler; Christensen)**

**STAFF ANALYSIS:** 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 and proposed to pay future RAFs on a timely basis.

This is the second docket established for the same rule violation. In the prior docket, No. 011065-TI, the Commission issued Order No. PSC-01-2288-PAA-TI on November 21, 2001, which imposed a \$500 fine or cancelled the company's registration. The company subsequently paid the past due amount and proposed a \$250 settlement. In addition, the company proposed to pay future RAFs on a timely basis. On February 22, 2002, Order No. PSC-02-0226-AS-TI was issued, which accepted the company's \$250 settlement. The company paid the \$250 contribution 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 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, the company's tariff should be cancelled and its name removed from the register administratively. In addition, the company should be required to immediately cease and desist providing intrastate interexchange services in Florida. If the company's tariff is cancelled and its name removed from the register, and subsequently decides to reapply for registration as an intrastate interexchange telecommunications company, the company should be required to first pay any outstanding RAF, including statutory late payment charges and the contribution.

DOCKET NO. 030776-TI  
DATE: DECEMBER 23, 2003

**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 tariff and removal from the register. **(Christensen)**

**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 tariff and removal from the register.