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DATE: DECEMBER 23, 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) *Rpic*

RE: DOCKET NO. 030968-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF CLEC CERTIFICATE NO. 5625 ISSUED TO CHOCTAW COMMUNICATIONS, INC. D/B/A SMOKE SIGNAL COMMUNICATIONS FOR VIOLATION OF RULE 25-24.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 01/06/04 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030968.RCM

CASE BACKGROUND

- **05/07/98** - This company obtained Florida Public Service Commission Competitive Local Exchange Telecommunications Company (CLEC) Certificate No. 5625.
- **12/21/99** - In a separate proceeding, Docket No. 991985-TX was established for nonpayment of the 1998 Regulatory Assessment Fee (RAF). On April 28, 2000, Order No. PSC-00-0850-AS-TX was issued, which approved the company's settlement proposal. The company subsequently paid the past due RAFs, including statutory late payment charges, the \$100 contribution, and the docket was closed.

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- **02/15/02** - The Commission received the company's payment for the 2001 RAF. The company reported revenues in the amount of \$3,373,399 for the period ended December 31, 2001.
- **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 mailed a delinquent notice via certified mail for nonpayment of the 2002 RAF. The US Postal Service subsequently returned the certified receipt showing 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 its 2002 RAF.
- **04/11/03** - Staff wrote the company and explained that the 2002 RAF had not been paid and that in order to avoid an enforcement docket from being established, the RAF needed to be paid by April 30, 2003.
- **06/09/03** - Ms. Sheree West, Attorney, called staff and stated that the liaison listed in the Master Commission Directory was no longer with the company and asked that staff's April 11, 2003, letter be faxed to her. The letter was faxed to Ms. West the same date.
- **07/03/03** - Staff faxed Ms. West a note explaining that payment for the RAF still had not been received and asked how the company wanted to proceed.
- **10/06/03** - The company did not pay the past due amount or contact staff; therefore, Docket No. 030968-TX was established for nonpayment of the 2002 RAF.
- **11/21/03** - Staff called the company and was advised of the new liaison. Staff's call was transferred to the new liaison's voice mail and a detailed message was left requesting a return call. Staff never received a return call.

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.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$1,000 penalty or cancel Choctaw Communications, Inc. d/b/a Smoke Signal Communications' certificate for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code?

RECOMMENDATION: The Commission should impose a \$1,000 penalty or cancel the company's certificate with an effective date of December 31, 2003, if the penalty and the Regulatory Assessment Fees, including statutory late payment 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 Commission's Order is not protested and the penalty and Regulatory Assessment Fees, including statutory late payment charges, are not received, the company's Certificate No. 5625 should be cancelled administratively with an effective date of December 31, 2003, and the collection of the past due fees should be referred to the Florida Department of Financial Services for further collection efforts. If Choctaw Communications, Inc. d/b/a Smoke Signal Communications' 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 services in Florida. **(Isler; Rojas)**

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a penalty 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.

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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 & Administrative Services' records show that the company had not paid its 2002 RAF, plus statutory late payment charges. In addition, on April 11, 2003, staff wrote the company and advised that payment of the 2002 RAF should be paid by April 30, 2003, to avoid a docket from being established.

As of December 12, 2003, Choctaw Communications, Inc. d/b/a Smoke Signal Communications has not paid the past due RAF, including statutory late payment charges, requested cancellation of its certificate as required in Rule 25-24.820, Florida Administrative Code, or proposed a settlement. Therefore, it appears the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. The penalty amount recommended in this docket is consistent with amounts imposed for recent, similar violations.

This is the second docket opened against Choctaw Communications, Inc. d/b/a Smoke Signal Communications for nonpayment of the RAF. On April 28, 2000, Order No. PSC-00-0850-AS-TX was issued in Docket No. 991985-TX. The Order accepted the company's \$100 settlement proposal. The company subsequently paid the past due RAFs and the \$100 settlement and the docket was then closed.

Accordingly, staff recommends that the Commission assess a \$1,000 penalty or cancel the company's certificate with an effective date of December 31, 2003, if the penalty and the Regulatory Assessment Fees, including statutory late payment 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 Commission's Order is not protested and the penalty and Regulatory Assessment Fees, including statutory late payment charges, are not received, the company's Certificate No. 5625 should be cancelled administratively with an effective date of

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December 31, 2003, and the collection of the past due fees should be referred to the Florida Department of Financial Services for further collection efforts. If Choctaw Communications, Inc. d/b/a Smoke Signal Communications' 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 services in Florida.

ISSUE 2: Should this docket 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 docket should then be closed upon receipt of the penalty and fees or cancellation of the certificate. **(Rojas)**

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 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, this docket should be closed upon receipt of the penalty and fees or cancellation of the certificate.