

State of Florida



Public Service Commission

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COMMISSION
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-M-E-M-O-R-A-N-D-U-M-

DATE: November 18, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Isler) *PIJ*
Office of the General Counsel (Teitzman) *AK* *DLZ* *MM*

RE: Docket No. 040894-TI – Compliance investigation of Nationwide Communications of Michigan, Inc. for apparent violation of Section 364.336, Florida Statutes.

Docket No. 040896-TI – Compliance investigation of North American Communications Control, Inc. for apparent violation of Section 364.336, Florida Statutes.

AGENDA: 11/30/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040894.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission cancel Nationwide Communications of Michigan, Inc.'s and North American Communications Control, Inc.'s intrastate interexchange telecommunications company (IXC) respective tariffs, remove the companies from the register with an effective date of December 31, 2004, and require the companies to immediately cease and desist providing intrastate interexchange telecommunications services in Florida, for apparent violation of Section 364.336, Florida Statutes?

Recommendation: Yes. (Isler; Teitzman)

Staff Analysis: See attached proposed Order.

DOCUMENT NUMBER-DATE

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PPSC-COMMISSION CLERK

Docket Nos. 040894-TI, 040896-TI

Date: November 18, 2004

Issue 2: Should these dockets be closed?

Recommendation: Staff recommends that the Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If any company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If any company's tariff is cancelled and its name removed from the register in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing intrastate interexchange telecommunications services in Florida. If any company fails to pay the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. These dockets should be closed administratively upon cancellation of the company's tariff and removal of its name from the register. **(Teitzman)**

Staff Analysis: Staff recommends that the Commission take action as set forth in the foregoing staff recommendation statement.

BEFORE THE PUBLIC SERVICE COMMISSION

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| In re: Compliance investigation of Nationwide Communications of Michigan, Inc. for apparent violation of Section 364.336, Florida Statutes. | DOCKET NO. 040894-TI |
| In re: Compliance investigation of North American Communications Control, Inc. for apparent violation of Section 364.336, Florida Statutes. | DOCKET NO. 040896-TI ORDER NO. ISSUED: |

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION ORDER
CANCELLING INTRASTATE INTEREXCHANGE COMPANY TARIFF AND REMOVAL
FROM THE REGISTER AND REQUIRING PAYMENT OF REGULATORY ASSESSMENT
FEES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Nationwide Communications of Michigan, Inc. currently holds Registration No. TI239, issued by the Commission on April 29, 1994, authorizing the provision of intrastate interexchange telecommunications service. North American Communications Control, Inc. currently holds Registration No. TI495, issued by the Commission on June 25, 1996, authorizing the provision of intrastate interexchange telecommunications service.

Pursuant to Section 364.336, Florida Statutes, intrastate interexchange telecommunications companies (IXCs) must pay a minimum annual Regulatory Assessment Fee (RAF) of \$50 if the registration was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of

January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due. All entities that apply for registration receive a copy of our rules governing intrastate interexchange telecommunications service.

The Division of the Commission Clerk & Administrative Services advised our staff that the entities listed below had not paid the Regulatory Assessment Fees required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the years specified below. Also, accrued statutory late payment charges required by Section 350.113(4), Florida Statutes, for the year(s) specified below had not been paid. The entities were scheduled to remit their respective 2003 Regulatory Assessment Fees by January 30, 2004. In addition, on June 10, 2004, our staff wrote the entities specified below and advised that payment of the 2003 Regulatory Assessment Fees should be paid by July 2, 2004, to avoid dockets from being established. As of November 2, 2004, the entities listed below have not paid the past due Regulatory Assessment Fees, including statutory late payment charges, requested cancellation of their respective tariff and removal from the register, or proposed a settlement. Each entity has a history of paying the Regulatory Assessment Fee after the due date. Nationwide Communications of Michigan, Inc. has paid the Regulatory Assessment Fee late or not at all in five of the past seven years and North American Communications Control, Inc. has paid the fee late or not at all in four of the past seven years. In addition, each entity has had two prior dockets for the same statute violation in which each entity proposed settlements or paid penalties to resolve the companies' respective dockets.

Nationwide Communications of Michigan, Inc.

Docket No. 971317-TP was established on October 13, 1997, for nonpayment of the 1996 Regulatory Assessment Fee for Nationwide Communications of Michigan, Inc.'s IXC and pay telephone certificates, overbilling consumers for long distance calls, and not responding to staff inquiries. On January 22, 1998, Order No. PSC-98-0121-PCO-TP was issued, which ordered the company to show cause why a \$500 fine should not be imposed or both certificates cancelled for nonpayment of Regulatory Assessment Fees, why a \$250 fine should not be imposed for overbilling, and why a \$1,500 fine should not be imposed for not responding to staff. The company subsequently paid the past due fees for both certificates, proposed a \$2,750 settlement for all rule violations, and proposed to refund the overcharges. On December 8, 1998, Order No. PSC-98-1651-AS-TP was issued, which accepted the company's settlement proposal. The company complied with the Order and the docket was closed.

Docket No. 001222-TI was established on August 24, 2000, for nonpayment of the 1999 Regulatory Assessment Fee by Nationwide Communications of Michigan, Inc. The company subsequently paid the past due fee and proposed a \$500 settlement. On January 26, 2001, Order No. PSC-01-0238-AS-TI was issued, which accepted the company's settlement offer. In its settlement offer, the company proposed to pay future Regulatory Assessment Fees in a timely manner. The company paid the settlement and the docket was closed.

North American Communications Control, Inc.

Docket No. 991539-TI was established on October 11, 1999, for nonpayment of the 1998 Regulatory Assessment Fee by North American Communications Control, Inc. The company subsequently paid the past due Regulatory Assessment Fee and proposed a \$100 settlement. On April 25, 2000, Order No. PSC-00-0809-AS-TI was issued, which accepted the company's settlement offer. In its settlement offer, the company proposed to pay future Regulatory Assessment Fees in a timely manner. The company paid the settlement and the docket was closed.

Docket No. 010897-TI was established on June 25, 2001, for nonpayment of the 2000 Regulatory Assessment Fee by North American Communications Control, Inc. The company subsequently paid the past due fee and proposed a \$500 settlement. On October 8, 2001, Order No. PSC-01-2003-AS-TI was issued, which accepted the company's settlement offer. In its settlement offer, the company proposed to pay future Regulatory Assessment Fees in a timely manner. The company paid the settlement and the docket was closed.

Analysis

Pursuant to Section 364.285, Florida Statutes, this Commission may impose a penalty or cancel a registration if a company refuses to comply with Commission rules, Orders, or Florida Statutes. Since this is the third docket established for nonpayment of the Regulatory Assessment Fees, the companies should be well aware when the fees are due each year. The cancellation of a registration for a third offense is consistent with a prior Commission decision. In Docket No. 000968-TC, by Order No. PSC-00-1815-PAA-TC, issued October 4, 2000, the Commission cancelled James M. Bracewell d/b/a Southern Tele-Communications' pay telephone certificate for violating the Regulatory Assessment Fee rule in three separate dockets (Nos. 971340-TC, 981273-TC, and 000968-TC). Based on the above, we find that cancellation of Nationwide Communications of Michigan, Inc.'s and North American Communications Control, Inc.'s respective tariffs and removals from the register are appropriate. There are no outstanding consumer complaints against Nationwide Communications of Michigan, Inc. or North American Communications Control, Inc.

| <u>ENTITY'S NAME</u> | <u>REGISTRATION NO.</u> | <u>PAST DUE RAFS</u> | <u>PAST DUE LATE PAYMENT CHARGES</u> |
|---|-------------------------|----------------------|--------------------------------------|
| Nationwide Communications of Michigan, Inc. | TI239 | 2002 2003 | 2002 2003 |
| North American Communications Control, Inc. | TI495 | 2003 | 2003 |

Decision

Accordingly, we hereby cancel Nationwide Communications of Michigan, Inc.'s and North American Communications Control, Inc.'s IXC tariffs and remove each entity from the register. If the past due fees, including statutory late payment charges, are not received within fourteen (14) calendar days after the issuance of the Consummating Order, the unpaid fees shall be turned over to the Florida Department of Financial Services for further collection efforts and these dockets shall be closed. The removal from the register in no way diminishes any entity's obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory late payment charges. If our Order is not protested, the companies' respective IXC tariffs and each entity's name shall be removed from the register effective December 31, 2004. If an entity is removed from the register in accordance with our Order, that entity shall immediately cease and desist providing intrastate interexchange telecommunications services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.02, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Nationwide Communications of Michigan, Inc.'s Registration No. TI239 and North American Communications Control, Inc.'s Registration No. TI495 to provide intrastate interexchange telecommunications services are hereby cancelled, effective December 31, 2004, and the respective docket closed. It is further

ORDERED that the cancellation of an entity's tariff and removal from the register in no way diminishes any of the entities' obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory late payment charges. Any unpaid Regulatory Assessment Fees and accrued statutory late payment charges shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if an entity's registration is cancelled in accordance with this Order, that entity shall immediately cease and desist providing intrastate interexchange telecommunications services in Florida. It is further

ORDERED that any protest to the action proposed herein shall specify the entity or entities to which it applies. It is further

ORDERED that if a protest to this Order is filed, the protest shall not prevent the action proposed herein from becoming final with regard to the remaining entity listed in this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

Docket Nos. 040894-TI, 040896-TI
Date: November 18, 2004

Attachment A

ORDERED that in the event this Order becomes final, these dockets shall be closed upon cancellation of the tariffs and removals from the register.

By ORDER of the Florida Public Service Commission this _____ day of _____,

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

AJT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on _____.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.