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Public Service Commission

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COMMISSION
CLERK

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

DATE: October 20, 2005

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

FROM: Division of Competitive Markets & Enforcement (Isler) *PK*
Office of the General Counsel (Fordham) *PK*

RE: Docket No. 050611-TX – Compliance investigation of Florida City-Link Communications, Inc., CLEC Certificate No. 5260, for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 11/01/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050611.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission cancel Florida City-Link Communications, Inc.'s competitive local exchange telecommunications company (CLEC) Certificate No. 5260 with an effective date of December 31, 2005, and require the company to immediately cease and desist providing competitive local exchange telecommunications service in Florida, 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: Yes, the company's CLEC certificate should be cancelled for nonpayment of the 2004 Regulatory Assessment Fee. (Isler; Fordham)

DOCUMENT NUMBER-DATE

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Staff Analysis: See attached proposed Order.

Issue 2: Should this docket 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 the 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 the company'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 service in Florida. If the company fails to pay the Regulatory Assessment Fee, 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 Fee, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. This docket should be closed administratively upon cancellation of the company's certificate. (Fordham)

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

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Florida City-Link Communications, Inc., CLEC Certificate No. 5260, for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies.	DOCKET NO. 050611-TX ORDER NO. ISSUED:
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION ORDER
CANCELLING COMPETITIVE LOCAL EXCHANGE COMPANY CERTIFICATE 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.

Florida City-Link Communications, Inc. currently holds competitive local exchange telecommunications company (CLEC) Certificate No. 5260, issued by the Commission on November 11, 1997.

The Division of the Commission Clerk & Administrative Services (CCA) advised our staff that Florida City-Link Communications, Inc. had not paid the Regulatory Assessment Fee (RAF) in full required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the year 2004. Also, accrued statutory late payment charges required by Section 350.113(4), Florida Statutes, for the years 2002, 2003, and 2004 have not been paid. Florida City-Link Communications, Inc. was scheduled to remit its 2004 RAFs by January 31, 2005. In addition to RAF payment notices sent by CCA, on July 29, 2005, our staff wrote Florida City-Link Communications, Inc. and advised that payment of the 2004 RAF should be paid by August 19, 2005, to avoid a docket from being established. As of October 6, 2005, Florida City-Link Communications, Inc. has not paid the past due RAF, including statutory late payment charges, requested cancellation of its certificate as required by Rule 25-24.820, Florida Administrative Code, or proposed a settlement. Florida City-Link Communications, Inc. has a history of paying the Regulatory Assessment Fee after the due date. The company has paid the

fee late or not at all every year except one since being granted a CLEC certificate in 1997. In addition, the company has had two prior dockets for the same rule violation in which it proposed settlements to resolve the dockets.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee of \$50 if the certificate 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 certification receive a copy of our rules governing competitive local exchange telecommunications service.

Docket No. 981962-TX was established on December 24, 1998, for nonpayment of the 1997 Regulatory Assessment Fee for Florida City-Link Communications, Inc. The company subsequently paid the past due fee and proposed a \$100 settlement. On May 10, 1999, Order No. PSC-99-0926-AS-TX 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. 001412-TX was established on September 15, 2000, for nonpayment of the 1999 Regulatory Assessment Fee. On March 12, 2001, the Commission issued Order No. PSC-01-0572-PAA-TX, which imposed a \$1,000 fine for a second offense or cancelled the company's certificate. The company subsequently paid the past due fee and proposed a \$500 settlement. On July 31, 2001, Order No. PSC-01-1586-AS-TX was issued, which accepted the company's settlement offer. In its settlement offer, the company again proposed to pay future Regulatory Assessment Fees in a timely manner. The settlement was paid and the docket closed.

Analysis

Pursuant to Section 364.285, Florida Statutes, this Commission may impose a penalty or cancel a certificate 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, Florida City-Link Communications, Inc. should be well aware when the fees are due each year. The cancellation of a certificate 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 Florida City-Link Communications, Inc.'s certificate is appropriate. There are no outstanding consumer complaints against Florida City-Link Communications, Inc.

Decision

Accordingly, we hereby cancel Florida City-Link Communications, Inc.'s CLEC certificate. If payment of the past due fee, including statutory late payment charges, is 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 this docket shall be closed. The cancellation of the certificate in no way diminishes the company's obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory late payment charges. If our Order is not protested, the company's CLEC Certificate No. 5260 shall be cancelled effective December 31, 2005. If Florida City-Link Communications, Inc.'s CLEC certificate is cancelled in accordance with our Order, the company shall immediately cease and desist providing competitive local exchange telecommunications service 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 Florida City-Link Communications, Inc.'s CLEC Certificate No. 5260 to provide local exchange telecommunications service is hereby cancelled, effective December 31, 2005, and the docket closed. It is further

ORDERED that the cancellation of Florida City-Link Communications, Inc.'s certificate in no way diminishes the company's 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 Florida City-Link Communications, Inc.'s certificate is cancelled in accordance with this Order, the company shall immediately cease and desist providing competitive local exchange telecommunications service in Florida. 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

ORDERED that in the event this Order becomes final, this docket shall be closed upon cancellation of the certificate.

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)

LF

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.