

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida  
Public Service Commission of  
Interexchange Telecommunications  
Certificate No. 3187 issued to  
Kirby Communications  
International, Inc., for  
violation of Rule 25-4.0161,  
F.A.C., Regulatory Assessment  
Fees.

DOCKET NO. 971104-TI  
ORDER NO. PSC-97-1252-FOF-TI  
ISSUED: October 14, 1997

The following Commissioners participated in the disposition of  
this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
DIANE K. KIESLING  
JOE GARCIA

NOTICE OF PROPOSED AGENCY ACTION ORDER  
IMPOSING FINE AND REQUIRING PAYMENT OF  
REGULATORY ASSESSMENT FEES OR CANCELING  
INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE  
AND DIRECTING CERTIFICATED INTEREXCHANGE  
TELECOMMUNICATIONS PROVIDERS  
TO DISCONTINUE SERVICE

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.

Kirby Communications International, Inc. (Kirby), an  
interexchange telecommunications carrier (IXC), currently holds  
certificate of public convenience and necessity number 3187, issued  
by the Commission on August 17, 1993, authorizing the provision of  
interexchange telecommunications service. Kirby has not paid the

DOCUMENT NUMBER-DATE

10518 OCT 14 97

FPSC-RECORDS/REPORTING

ORDER NO. PSC-97-1252-FOF-TI  
DOCKET NO. 971104-TI  
PAGE 2

regulatory assessment fees required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the years 1993 and 1996. The regulatory assessment fee form was mailed to Kirby in September, 1993 for the period of January 1, 1993, through December 31, 1993. The regulatory assessment fee form was mailed to Kirby in December, 1995 for the period of January 1, 1996, through December 31, 1996. 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. Notification of the delinquency was mailed via certified letter to the address listed in the Master Commission Directory on June 3, 1997. The letter was returned by the US Post Office marked "unclaimed." The company has been given adequate opportunity to pay. Yet, there has been no response, and, to date, Kirby has not paid the required fees.

For the reason described above, pursuant to Rule 25-24.474(1)(b) and (c), Florida Administrative Code, we find it appropriate to cancel Kirby's certificate, unless the company pays a \$500 fine for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, and remits all past due regulatory assessment fees, along with statutory penalties and interest charges, to the Florida Public Service Commission. Kirby must comply with these requirements within 5 business days from the date this Order becomes final. The fine will be remitted to the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.516, Florida Statutes.

When the appropriate fees, statutory penalties, interest charges, and fine are received, this docket shall be closed. Should Kirby fail to comply with this Order within 5 business days from the date this Order becomes final, Kirby shall have its certificate canceled and the docket will be closed. The cancellation of the certificate and the closing of the docket in no way diminishes Kirby's obligation to pay applicable delinquent regulatory assessment fees, statutory penalties, and interest charges.

Should Kirby's certificate be canceled, all certificated interexchange carriers in the State of Florida are instructed to discontinue service to Kirby, pursuant to Rule 25-24.4701(3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited. Any certificated interexchange carriers providing service to Kirby

ORDER NO. PSC-97-1252-FOF-TI  
DOCKET NO. 971104-TI  
PAGE 3

must contact the Commission at the conclusion of the response period indicated herein in order to determine if Kirby's certificate has been canceled.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Kirby Communications International, Inc., must pay the past due regulatory assessment fees, statutory penalties, interest charges, and a \$500 fine to the Florida Public Service Commission for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, within 5 business days from the date this Order becomes final. The fine will be transmitted to the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that should Kirby Communications International, Inc., fail to comply with this Order, Kirby Communications International, Inc.'s certificate shall be canceled, and the docket shall be closed. It is further

ORDERED that the cancellation of the certificate and the closing of the docket in no way diminishes Kirby Communications International, Inc.'s obligation to pay applicable delinquent regulatory assessment fees, statutory penalties, and interest charges. It is further

ORDERED that all certificated interexchange telecommunication providers shall discontinue service to Kirby Communications International, Inc., upon verification of the cancellation of the certificate at the conclusion of the response period set forth in this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed upon payment of the fines, and fees, or upon cancellation of the certificate.

ORDER NO. PSC-97-1252-FOF-TI  
DOCKET NO. 971104-TI  
PAGE 4

By ORDER of the Florida Public Service Commission, this 14th  
day of October, 1997.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

JRB

ORDER NO. PSC-97-1252-FOF-TI  
DOCKET NO. 971104-TI  
PAGE 5

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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 and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 4, 1997.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The

ORDER NO. PSC-97-1252-FOF-TI  
DOCKET NO. 971104-TI  
PAGE 6

notice of appeal must be in the form specified in Rule 9.900(a),  
Florida Rules of Appellate Procedure.