

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida Public Service Commission of Interexchange Certificate No. 7233 issued to Sterling Time Company d/b/a STC for apparent violation of Rules 25-4.0161, F.A.C., Regulatory Assessment Fees, 25-4.043, F.A.C., Response to Commission Staff Inquiries, and 25-24.480, F.A.C., Records and Reports, Rules Incorporated.

DOCKET NO. 020385-TI
ORDER NO. PSC-02-0715-PAA-TI
ISSUED: May 24, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER CANCELLING INTEREXCHANGE CERTIFICATE
FOR VIOLATION OF RULES 25-4.0161, 25-4.043, AND
25-24.480, FLORIDA ADMINISTRATIVE CODE

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.

On November 12, 1999, Sterling Time Company d/b/a STC was granted Certificate No. 7233 to provide interexchange company (IXC) telecommunications service in the State of Florida.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

On November 7, 2001, we sent a certified letter to STC requesting information regarding a prepaid phone card labeled as The Florida Penny Card for which STC is listed as the prepaid calling service provider. The return receipt for that letter indicated that a company representative received the letter on November 13, 2001. STC's executive secretary informed our staff that STC was not the service provider for the phone card. However, when staff contacted the distributor listed on the back of the phone card, the distributor informed our staff that STC instructed him to remove all of the phone card stock from retail outlets because the phone cards were no longer active. Our staff confirmed that the access number on The Florida Penny Card did not work.

A second certified letter was sent on November 16, 2001, in which further information was requested regarding the discontinuance of service for The Florida Penny Phone Card. No response was received by the due date of November 26, 2001. On December 3, 2001, the return receipt card from the certified letter was received, indicating that Mr. Ronald Schmidt, a corporate officer of STC, received the certified letter. No delivery date was listed. On December 12, 2001, the 2001 Regulatory Assessment Fee (RAF) was mailed to STC.

On December 18, 2001, it was discovered that STC filed an Amendment to its Articles of Incorporation with the Florida Department of State which indicated that STC had changed its name to Fusion Telecom, Inc. and that Mr. Ronald L. Schmidt, Jr. had been installed as its new Director/President.

A third certified letter was mailed on February 12, 2002, addressed to Mr. Ronald L. Schmidt, Jr., at Fusion Telecom, Inc. (f.k.a. Sterling Time Company d/b/a STC). This letter requested that STC update its contact information and request a name change with this Commission. On February 20, 2002, a 2001 RAF delinquency notice was sent to the company. The third certified letter was returned unopened and unclaimed by the recipient on March 12, 2002. A facsimile of the February 12, 2002 letter was sent on March 13, 2002 to Mr. Ronald Schmidt at the fax number listed in the Master Commission Directory (MCD). No response was received.

Section 364.285, Florida Statutes, authorizes this Commission to impose a fine or revoke a company's certificate if a company

refuses to comply with our rules. Rule 25-24.474(1)(b), Florida Administrative Code, authorizes this Commission to cancel a company's certificate for violation of Commission rules or orders. STC has apparently violated three of our rules.

Rule 25-24.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of Commission Clerk and Administrative Services' records show that STC has not paid its 2001 RAFs, plus statutory penalty and interest charges. RAFs for the calendar year 2001 were due by January 30, 2002, and those fees are currently unpaid. Consequently, it appears that STC has not complied with Rule 25-4.0161, Florida Administrative Code.

Rule 25-4.043, Florida Administrative Code, states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

We have given STC several opportunities to reply to inquiries regarding The Florida Penny Card and its prepaid calling service. We have sent STC several certified letters inquiring about the company's service and attempted to call the company several times. STC has not provided our staff with a written reply to its inquiries in apparent violation of Rule 25-4.043, Florida Administrative Code.

Rule 25-24.480(2), Florida Administrative Code, states:

(2) Each company shall file updated information for the following items with the Division of Competitive Markets and Enforcement and the Division of the Commission Clerk and Administrative Services within 10 days after such changes occur.

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(a) The address of the certificate holder's main corporate and Florida offices (if any) including street name and address and post office box, city, state, and zip code.

(b) Telephone number, name, and address of the individual who is to serve as primary liaison with the Commission in regards to the ongoing Florida operations of the certified company.

As indicated above, STC has apparently failed to update its primary liaison information as required. Attempts to contact the company using the information listed in the MCD were without success. Consequently, it appears that the company has either moved or ceased doing business under the name STC.

In Order No. PSC-01-1031-PAA-TC in Docket No. 010096-TC we cancelled a pay telephone certificate for failure of the company to pay RAFs, update its contact information, and respond to staff's inquiries. The facts in this docket are consistent with that order.

Based on STC's apparent disregard of our inquiries and other apparent rule violations, we hereby cancel STC's IXC Certificate No. 7233 for apparent violation of Rule Nos. 25-4.0161, 25-24.043, and 25-24.480(2), Florida Administrative Code. If the Proposed Agency Action Order is not protested within 21 days of issuance, the company's certificate shall be cancelled administratively upon issuance of the Consummating Order. STC is required to immediately cease and desist providing IXC telecommunications services in Florida. If the past due regulatory assessment fees, including statutory penalty and interest charges, are not received within 14 calendar days after issuance of the Consummating Order, the amount shall be forwarded to the Office of the Comptroller for collection.

If no timely protest to this proposed agency action is filed within 21 days of the date of issuance of this Order, this docket shall be closed upon issuance of the Consummating Order and the cancellation of IXC Certificate No. 7233.

This Commission is vested with jurisdiction over these matters pursuant to Sections 364.183, 364.336, 364.337, and 364.285, Florida Statutes.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sterling Time Company d/b/a STC's Certificate No. 7233 to provide IXC telecommunications, is issued as proposed agency action and 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 Sterling Time Company d/b/a STC, shall return to this Commission the Order granting authority to provide IXC telecommunications services and remit Regulatory Assessment Fees for the years 2001 and 2002. It is further

ORDERED that if the past due Regulatory Assessment Fees, including statutory penalty and interest charges, are not received within 14 calendar days after issuance of the Consummating Order, the amount shall be forwarded to the Office of the Comptroller for collection. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 24th
Day of May, 2002.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

LHD

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

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Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 14, 2002.

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.