

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Cybertel,
Communications Corp. for apparent violations
of Sections 364.02(13), 364.04, and 364.336,
Florida Statutes.

DOCKET NO. 030995-TI
ORDER NO. PSC-04-0387-PAA-TI
ISSUED: April 9, 2004

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER ACCEPTING SETTLEMENT PROPOSAL

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.

Section 364.336, Florida Statutes, requires the payment of Regulatory Assessment Fees (RAFs) 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.

Because Cybertel did not pay its 2001 RAF, our staff opened Docket No. 020716-TI, Cancellation by Florida Public Service Commission of IXC Certificate No. 7554 issued to Cybertel, Communications Corp. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. On October 21, 2002, this Commission issued Proposed Agency Action (PAA) Order No. PSC-02-1443-PAA-TI, which imposed a \$500 penalty or canceled Cybertel's IXC certificate. Cybertel failed to respond to the PAA Order; thus on November 18, 2002, this Commission issued Consummating Order (CO) No. PSC-02-1596-CO-TI, which made the PAA Order final, and canceled Cybertel's IXC certificate.

On June 24, 2003, this Commission received a consumer complaint, Request No. 540430T, regarding improper billing. The complainant claimed that he was receiving monthly bills from two long distance providers for the same calls. The complainant reported that his preferred carrier was Cybertel. While investigating this complaint, our staff discovered in

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September 2003 that Cybertel continued to provide intrastate interexchange telecommunications services in Florida even though its certificate was canceled by this Commission in 2002.

Section 364.02(13), Florida Statutes, requires each IXC to provide this Commission with information to contact and communicate with the company. Section 364.02(13), Florida Statutes, states in pertinent part:

Each intrastate interexchange telecommunications company shall continue to be subject to ss. 364.04, 364.10(3)(a), and (d), 364.285, 364.163, 364.501, 364.603, and 364.604, shall provide the commission with such current information as the commission deems necessary to contact and communicate with the company....

Section 364.04(1), Florida Statutes, states:

Upon order of the commission, every telecommunications company shall file with the commission, and shall print and keep open to public inspection, schedules showing the rates, tolls, rentals, contracts, and charges that a company for service to be performed within the state.

Our staff contacted Mr. Richard Schmidt, of Cybertel, who stated that he was unaware of Cybertel's certificate cancellation and he confirmed that Cybertel had not ceased providing telecommunications services in Florida. On September 18, 2003, our staff mailed Cybertel a certified letter outlining the steps the company needed to take to correct this situation. Our staff requested the company to pay its past due RAFs, with statutory penalty and interest, as well as the \$500 fine assessed in Docket No. 020716-TI, and file its registration and tariff with this Commission by September 30, 2003.

Cybertel did not respond to our staff's letter or take any of the steps requested by our staff. On October 21, 2003, our staff opened this docket to investigate whether this Commission should impose a penalty on the company for violating Commission rules, statutes and Orders.

In December 2003, Cybertel contacted our staff to initiate a settlement in this docket. After several discussions from December 2003 to February 2004, Cybertel submitted its written offer of settlement on February 9, 2004, with an addendum filed February 12, 2004, and proposed the following:

- To pay penalty and interest owed for late payment of its 2000 RAFs (paid December 23, 2003);
- to pay its 2001 RAFs plus penalty and interest (paid December 23, 2003);
- to pay its 2002 RAFs plus penalty and interest (paid December 23, 2003);
- to pay its 2003 RAFs plus penalty and interest (in process);

- to pay its 2004 RAFs (in process);
- to pay the \$500 penalty imposed in Docket No. 020716-TI (paid December 29, 2003);
- to pay a voluntary contribution of \$5,000 to settle its apparent violation of Sections 364.02(13), 364.04, and 364.336, Florida Statutes (paid December 29, 2003);
- to sell its customer base to an IXC registered with the Florida Commission and provide a copy of its customer notification letter (transaction completed February 12, 2004); and
- to resolve any outstanding issues regarding complaints filed with this Commission.

Our staff provided Cybertel the 2003 and 2004 RAF forms which the company is processing. This Commission has also received notice from COMTECH 21, LLC on December 23, 2003, regarding its purchase of Cybertel's customer base, along with a sample copy of the customer notification letter.

This Commission is vested with jurisdiction over these matters pursuant to Sections 364.02(13), 364.04, 364.285 and 364.336, Florida Statutes. The monies offered by Cybertel are consistent with the amounts the Commission has accepted as settlements in previous dockets for the same types of apparent statute violations. In addition, our staff notes that Cybertel has no outstanding issues regarding consumer complaints.

If no person, whose substantial interests are affected by the proposed actions files a protest of the Commission's decision on Issue 1 within the 21 day protest period, the Commission's Order will become final upon issuance of a Consummating Order. If the Commission's Order is not protested and Cybertel complies with its settlement offer, this docket shall be closed administratively. If Cybertel fails to pay the Regulatory Assessment Fees owed, with penalty and interest, within 30 days of the issuance of the Consummating Order, this docket shall remain open pending further proceedings.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement offer proffered by Cybertel shall be accepted, provided that Cybertel complies with all outstanding proposals. 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

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ORDERED that in the event this Order becomes final and Cybertel complies with its settlement offer, this docket shall be closed administratively. If Cybertel fails to pay the Regulatory Assessment Fees owed, with penalty and interest, within 30 days of the issuance of the Consummating Order, this docket shall remain open pending further proceedings.

By ORDER of the Florida Public Service Commission this 9th day of April, 2004.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(SEAL)

JPR

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.

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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 April 30, 2004.

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.