

Talbott
Vandiver:

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

August 28, 1997

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FPSC - Records Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (BIEGALSKI) KB
DIVISION OF ADMINISTRATION (LAKE) MLL
DIVISION OF LEGAL SERVICES (BOWMAN, PEÑA) JPB

RE: DOCKET NO. 970982-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 4062 ISSUED TO LYRIHN COMMUNICATIONS, INC. D/B/A COMMUNITY SPIRIT AND D/B/A BLUE EARTH COMMUNICATIONS FOR VIOLATION OF RULE 25-4.0161, FLORIDA ADMINISTRATIVE CODE, REGULATORY ASSESSMENT FEES.

AGENDA: 09/09/97 REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:PSC/CMU/WP/970982TI.RCM

CASE BACKGROUND

- Lyrihn Communications, Inc. d/b/a Community Spirit and d/b/a Blue Earth Communications (Lyrihn) obtained Florida Public Service Commission Interexchange Telecommunications certificate number 4062 on September 15, 1995.
- On June 3, 1997, the Division of Administration mailed a certified letter to the address listed in the Master Commission Directory informing Lyrihn that it was delinquent on its regulatory assessment fees for the year 1996. The letter was signed for and received, but to date, no response has been received by staff (Attachment A, Page 5).
- As of August 19, 1997, the delinquent regulatory assessment fees for 1996, along with statutory penalties and interest charges, have not been submitted by Lyrihn.

DOCUMENT NUMBER - DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 970982-T1
DATE: August 28, 1997

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$500 fine or cancel Lyrihn's Interexchange Telecommunications Certificate No. 4062 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel the company's certificate if the fine and the regulatory assessment fees, including statutory penalties and interest, are not received by the Commission within 5 business days after the conclusion of the 21 day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and the regulatory assessment fees, including statutory penalties and interest, are not received, certificate number 4062 should be canceled. (Biegalski)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, requires the 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.

On July 29, 1997, staff learned that Lyrihn had not submitted the regulatory assessment fees for the year 1996, along with statutory penalties and interest charges. Therefore, the company has failed to comply with Rule 25-4.0161, Florida Administrative Code.

Accordingly, staff recommends that the Commission assess a \$500 fine for failure to comply with Commission rules or cancel certificate number 4062 if the fine and the regulatory assessment fees, along with statutory penalties and interest, are not paid within the specified time.

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ISSUE 2: Should the Commission order all certificated interexchange companies (IXCs) to discontinue providing interexchange telecommunications service to Lyrihn pursuant to Rule 25-24.4701(3), Florida Administrative Code, if certificate number 4062 is canceled?

RECOMMENDATION: Yes. Pursuant to Rule 25-24.4701(3), Florida Administrative Code, the Commission should order all certificated interexchange companies to discontinue providing interexchange telecommunications service to Lyrihn if Lyrihn's certificate is canceled at the conclusion of the protest period for failure to submit the delinquent regulatory assessment fees, and pay the fines as required in Issue 1. The Order should state that any IXC providing service to Lyrihn must contact the Commission at the conclusion of the protest period as set forth in the Order to determine whether the certificate has been canceled. (Biegalski)

STAFF ANALYSIS: Rule 25-24.4701(3), Florida Administrative Code, states in part:

(3) The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

If Lyrihn's certificate is canceled, any intrastate interexchange service offered by Lyrihn would be in violation of Rule 25-24.4701(3), Florida Administrative Code. Since the Commission cannot readily identify which IXC provides service to Lyrihn, the Commission should order all certificated IXCs to discontinue service to Lyrihn if Lyrihn fails to comply with the terms of the Commission's order resulting from these recommendations. The Order should state that any IXC providing service to Lyrihn must contact the Commission at the conclusion of the protest period as set forth in the Order to determine whether the certificate has been canceled.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final. Upon payment of the fines and fees, or cancellation of the certificate, this docket should be closed. (Bowman, Peña)

STAFF ANALYSIS: If the Commission adopts staff's recommendation in Issue 1, then Lyrihn will have 21 days from the issuance date of the Order to file a timely protest to the Commission's Proposed Agency Action. If no protest is filed, the docket should be closed upon payment of the fines and fees, or upon cancellation of the certificate.

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SENDER: • Complete items 1 and/or 2 for additional services. • Complete items 3, 4a, and 4b. • Print your name and address on the reverse of this form so that we can return this card to you. • Attach this form to the front of the mailpiece, or on the back if space does not permit. • Write "Return Receipt Requested" on the mailpiece below the article number. • The Return Receipt will show to whom the article was delivered and the date delivered.		I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee
3. Article Addressed to: <p style="font-size: 1.5em; margin-left: 20px;">TI 397</p>	4a. Article Number <p style="font-size: 1.5em; margin-left: 20px;">174 241 335</p>	
5. Received By (Print Name) <p style="font-size: 1.5em; margin-left: 20px;">S. J. ...</p>		4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COO
6. Signature (Addressee or Agent) <p style="font-size: 1.5em; margin-left: 20px;">X ...</p>		7. Date of Delivery <p style="font-size: 1.5em; margin-left: 20px;">6.9.97</p>
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