



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: MARCH 4, 1999

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

FROM: DIVISION OF COMMUNICATIONS (ISLER) *Dif Sin*
DIVISION OF LEGAL SERVICES (K. PEÑA/BROWN) *ymf mcs*

RE: DOCKET NO. 981569-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALEC CERTIFICATE NO. 4424 ISSUED TO TELENET OF SOUTH FLORIDA, INC. FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES, AND 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES

AGENDA: 03/16/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: PLEASE PLACE DOCKET NO. 981569-TX ON THE AGENDA IMMEDIATELY AFTER DOCKET NO. 970730-TP

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981569.RCM

CASE BACKGROUND

Telenet of South Florida, Inc. obtained Certificate No. 4424 on May 9, 1996. The 1997 regulatory assessment fee (RAF) was paid by the company after the January 30, 1998 deadline. However, the company did not pay the required statutory penalty and interest charges for the late payment. The 1998 RAF form was mailed December 10, 1998 and due by February 1, 1998. As of February 24, 1999, the company has not paid the past due amount.

The Division of Records and Reporting and the Division of Communications has had mail returned by the USPS on several different occasions.

DOCUMENT NUMBER DATE

02724 MAR-3 99

FILED IN THE PUBLIC SERVICE COMMISSION

Staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$500 fine or cancel Telenet of South Florida, Inc.'s ALEC Certificate No. 4424 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel the company's certificate if the fine and statutory penalties and interest are not received by the Commission within five 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 statutory penalties and interest are not received, the certificate should be canceled. (Isler)

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.

According to the Division of Administration's records, this company paid its 1997 regulatory assessment fees on February 26, 1998, but did not pay the required statutory penalties and interest charges for the late payment. In addition, the 1998 RAF form was mailed on December 10, 1998. The USPS returned the 1998 RAF form stamped "return to sender" and "moved, left no forwarding address." As of February 24, 1999, the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies by not paying the 1997 penalty and interest charges and the 1998 RAFs, penalty, and interest charges.

Accordingly, staff recommends that the Commission assess a \$500 fine for failure to comply with the Commission rules or cancel

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the company's certificate if the fine and fees are not paid within five 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 fees are not paid, the certificate should be canceled.

ISSUE 2: Should the Commission impose a \$10,000 fine or cancel Telenet of South Florida, Inc.'s ALEC Certificate No. 4424 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. The Commission should impose a \$10,000 fine or cancel the company's certificate if the company does not respond to staff's request for information as required by Rule 25-4.043, F.A.C. and fine are not received by the Commission within five 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 required response and fine are not received, the company's certificate should be canceled. (Isler)

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.820, Florida Administrative Code, establishes the requirements for cancellation of an ALEC certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Rule 25-24.835, F.A.C., Records & Reports; Rules Incorporated, incorporates Rule 25-4.043, Florida Administrative Code, which 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.

On August 13, September 10, and October 1, the Division of Records and Reporting had mail to this company returned by the USPS. The first two returned envelopes were stamped "return to sender" and "attempted, not known." The latest returned mail was stamped "return to sender" and "moved, left no forwarding address."

On July 10, 1998, staff sent the company a data request and requested a response by August 7, 1998. When the company did not respond, a certified letter was sent September 2, 1998. The USPS returned the unopened envelope stamped "return to sender" and "attempted, not known."

Accordingly, staff recommends that the Commission assess a \$10,000 fine for failure to comply with the Commission rules or cancel the company's certificate if the fine and response to staff inquiries as required by Rule 45-4.043, Florida Administrative Code, are not received by the Commission within five 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 required information and fine are not received, the certificate should be canceled.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, 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. (K. Peña/Brown)

STAFF ANALYSIS: Whether staff's recommendation on Issues 1 and 2 are approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon payment of the fines and fees, or upon cancellation of the certificate.