



Public Service Commission

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RECORDS AND REPORTING

DATE: MARCH 23, 2000

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

FROM: DIVISION OF TELECOMMUNICATIONS (ISLER) *Pxi*
DIVISION OF LEGAL SERVICES (K. PEÑA; B. KEATING) *VMF c. h. f. B.K.*

RE: DOCKET NO. 991977-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 5227 ISSUED TO EVERGLADES NATIONAL COMMUNICATION NETWORK, INC. FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 04/04/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\991977.RCM

CASE BACKGROUND

- **09/12/97** - This company was granted ALEC Certificate No. 5227.
- **12/10/98** - The 1998 regulatory assessment fee (RAF) notice was mailed. Payment was due by February 1, 1999.
- **03/17/99** - The Division of Administration mailed a delinquent letter to the company.
- **05/21/99** - In a separate proceeding addressing prior unpaid RAFs, Order No. PSC-99-1043-AS-TX was issued, in Docket No. 981971-TX, accepting the company's settlement offer to pay a \$100 contribution and proposal to pay future RAFs on a timely basis. The company paid the settlement on May 10, 1999, and

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the docket was closed. The company reported no revenues on its 1997 RAF return for the period ended December 31, 1997.

- 01/12/00 - Mr. Timothy A. Nemeckay, President, called staff and advised that he would propose a settlement and pay the past due amount in full.

Staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$1,000 fine or cancel Everglades National Communication Network, Inc.'s alternative local exchange telecommunications certificate for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$1,000 fine or cancel the company's certificate if the fine and the 1998 and 1999 regulatory assessment fees, including statutory penalty and interest charges, are not received by the Commission within five business days after the issuance of the Consummating Order. 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 regulatory assessment fees, including statutory penalty and interest charges, are not received, the company's Alternative local exchange Telecommunications Certificate No. 5227 should be canceled administratively. (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 alternative local exchange telecommunications company certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

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

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penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of Administration's records show that the company had not paid its 1998 regulatory assessment fee, plus statutory penalty and interest charges. After the docket was opened, but prior to a recommendation being filed, Mr. Timothy A. Nemeckay, President, called staff on January 12, 2000, and advised that he would pay the 1998 past due amount and make a settlement offer. In addition, the 1999 RAF, which was due January 31, 2000, has not been paid. As of March 15, 2000, there has been no further contact and Commission records show that the 1998 and 1999 RAF remains unpaid. Therefore, it appears the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies and has not requested cancellation of its certificate in compliance with Rule 25-24.820, Florida Administrative Code.

This is the second time a docket has been opened against this company for nonpayment of the regulatory assessment fee. Docket No. 981971-TX was opened for nonpayment of the 1997 RAF. On May 21, 1999, Order No. PSC-99-1043-AS-TX was issued, which accepted the company's \$100 settlement. The company paid the past due RAF, including statutory penalty and interest charges, and settlement amount, and the docket was closed.

Accordingly, staff recommends that the Commission assess a \$1,000 fine for failure to comply with the Commission rules or cancel the company's certificate if the fine and the 1998 and 1999 regulatory assessment fees, along with statutory penalty and interest charges, are not paid within five business days after the issuance of the Consummating Order. 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 regulatory assessment fees, including statutory penalty and interest charges, are not received, the company's Alternative Local Exchange Telecommunications Certificate No. 5227 should be canceled administratively.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission approves or modifies staff's recommendation on Issue 1, this docket should be closed upon receipt of the fine and fees or cancellation of the certificate, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action order. If the Commission denies staff's recommendation on Issue 1, this docket should be closed administratively. (K. Peña; B. Keating)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or modified, the result will be a proposed agency action order and this docket should be closed upon receipt of the fine and fees or cancellation of the certificate unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action. If the Commission denies staff's recommendation on Issue 1, this docket should be closed administratively.