

State of Florida

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Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

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

DATE: JUNE 8, 2000

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *Pix* *JD*
DIVISION OF LEGAL SERVICES (STERN) *MKS* *BL*

RE: DOCKET NO. 991530-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 4001 ISSUED TO NETEL, INC. D/B/A TEL3 FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 06/20/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\991530.RCM

CASE BACKGROUND

- **05/18/95** - This company obtained Florida Public Service Commission IXC Certificate No. 4001.
- **12/96** - The Division of Administration mailed the 1996 Regulatory Assessment Fee (RAF) notice. Payment was due January 30, 1997.
- **02/28/97** - The Division of Administration mailed the delinquent notice for the 1996 RAF.
- **12/11/97** - The Division of Administration mailed the 1997 RAF notice. Payment was due January 30, 1998.

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- **03/06/98** - The Commission received a check for the 1997 RAF, including statutory penalty and interest charges. The 1996 RAF remained unpaid.
- **12/10/98** - The Division of Administration mailed the RAF notice. In accordance with Florida Statute 350.113(4), the Commission "shall provide each regulated company with written notice of the date that payment of the fee is due at least 45 days prior to such date", which would put the due date to February 1, 1999.
- **03/17/99** - The Division of Administration mailed a delinquent notice.
- **11/08/99** - The Commission received a check from the company for the 1998 RAF, however, the statutory penalty and interest charges were not paid.
- **11/29/99** - Mr. Ken Jacobi called on behalf of the company and advised that he would pay the 1996 RAF, including statutory penalty and interest charges. He also requested that staff fax him information on how to resolve this docket. This information was faxed on the same date.
- **12/01/99** - The Commission received a check for the 1996 RAF.
- **12/08/99** - The Division of Administration mailed the 1999 RAF notice.
- **12/14/99** - Order No. PSC-99-2441-PAA-TI was issued. The company had until January 4, 2000, to respond to the Order.
- **01/24/00** - Staff called Mr. Ken Jacobi. He verbally advised staff that he would mail the company's proposed settlement today or tomorrow. The Commission did not receive the settlement as promised by the company.
- **03/16/00** - Staff mailed the company a certified letter and requested a response by April 3, 2000. Staff informed the company that failure to respond would be considered by staff to be a withdrawal of its intention to file a settlement offer and the docket would be closed.
- **03/24/00** - The Commission received a check for the 1998 past due amount in full, along with a letter which advised the company proposed to pay a \$100 settlement, stated it had taken

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steps to prevent late payments of the RAFs in the future, and stated that the 1999 RAF, along with statutory penalty and interest charges would be paid on April 10, 2000.

- **04/26/00** - Staff called Mr. Jacobi and advised that the 1999 RAF had still not been paid. Mr. Jacobi stated he would check and call back in a few minutes.
- **04/27/00** - Staff called Mr. Jacobi again since no return call was received. Mr. Jacobi advised he would put the 1999 RAF in the overnight mail.

Staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by NeTel, Inc. d/b/a Tel3 to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: No. The Commission should not accept NeTel, Inc. d/b/a Tel3's settlement offer, which proposed to pay the 1999 RAF, statutory penalty and interest charges on April 10, 2000, a \$100 contribution, and pay future RAFs on a timely basis. The company has already failed to honor its agreement by not paying the 1999 RAFs on April 10. The RAFs remain unpaid as of May 23, 2000. Therefore, Order No. PSC-99-2441-PAA-TI proposing to cancel NeTel, Inc. d/b/a Tel3's IXC certificate should be rendered a Final Order. If the company fails to pay in full the required 1999 regulatory assessment fee, including statutory penalty and interest charges, and fine within five business days of the issuance of the Order from this recommendation, NeTel, Inc. d/b/a Tel3's Certificate No. 4001 should be canceled in accordance with Order No. PSC-99-2441-PAA-TI. If the fine is paid, it should be remitted to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund. (Isler)

STAFF ANALYSIS: Order No. PSC-99-2441-PAA-TI, issued on December 14, 1999, was never consummated because the company attempted to rectify the rule violation by paying the 1996 and 1998 RAFs, including penalty and interest charges, and proposing a settlement. NeTel, Inc. d/b/a Tel3 did not file a response to the Commission's proposed agency action order as required by Rule 28-106.201, Florida Administrative Code, and did not request a hearing. The settlement letter stated that the 1999 RAF would be paid on April 10, 2000. This docket was left open in order to receive the 1999 RAF payment. NeTel, Inc. d/b/a Tel3 indicated that it planned to submit. The 1999 RAF was not paid by April 27, therefore, staff called Mr. Jacobi and explained that staff could not recommend acceptance of the company's settlement offer when the 1999 RAF is past due. Mr. Jacobi verbally advised staff that the 1999 RAF would be put in the overnight mail. As of May 23, the payment has not been received.

Therefore, staff recommends that the Commission not accept NeTel, Inc. d/b/a Tel3's settlement offer. In addition, staff recommends that Order No. PSC-99-2441-PAA-TI should be rendered a Final Order. If the company fails to pay in full the required 1999 regulatory assessment fee, including statutory penalty and interest

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charges, and fine within five business days of the issuance of the Order from this recommendation, NeTel, Inc. d/b/a Tel3's Certificate No. 4001 should be canceled in accordance with Order No. PSC-99-2441-PAA-TI. If the fine is paid, it should be remitted to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission approves staff's recommendation in Issue 1, this docket should be closed as no further action by the Commission is required. (Stern)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed as no further action by the Commission is required.