



Public Service Commission

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RECORDS AND REPORTING

DATE: FEBRUARY 8, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *dy*
DIVISION OF LEGAL SERVICES (K. PEÑA; B. KEATING) *mm*

RE: DOCKET NO. 001413-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 5269 ISSUED TO PINNACLE TELCOM, INC. FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 02/20/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001413.RCM

CASE BACKGROUND

- **11/24/97** - This company was granted Certificate No. 5269.
- **12/24/98** - Docket No. 981963-TX was established for nonpayment of the 1997 Regulatory Assessment Fee (RAF). On March 30, 1999, the Commission received the company's payment for the 1998 RAF, including statutory penalty and interest charges, and a settlement proposal. The company reported revenues in the amount of \$322,978 for the period ended December 31, 1998. On May 10, 1999, Order No. PSC-99-0919-AS-TX was issued, which accepted the company's \$100 settlement proposal. On May 14, 1999, the Commission received the company's check for the \$100 settlement, therefore, the docket was closed.

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- **12/08/99** - The Division of Administration mailed the 1999 RAF notice. Payment was due January 31, 2000.
- **02/29/00** - The Division of Administration mailed a delinquent notice to the company.
- **10/23/00** - Ms. Eva Sokolewicz called on behalf of Pinnacle Telcom, Inc. and requested that the 1999 RAF return and the company's options be faxed to her. This was done on October 24, 2000.
- **12/12/00** - The 2000 RAF notice was mailed. Payment was due by January 30, 2001.
- **01/31/01** - As of this date, the company has not paid the 1999 and 2000 past due amount or requested cancellation of its certificate in compliance with Rule 25-24.820, Florida Administrative Code.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.337, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$1,000 fine or cancel Pinnacle Telcom, Inc.'s certificate for apparent violation of Rule 25-4.0161, Florida Administrative Code, 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 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 Certificate No. 5269 should be cancelled administratively and the collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. (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 a 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, which implements Section 364.336, Florida Statutes, 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.

The Division of Administration's records show that the company had not paid its 1999 and 2000 regulatory assessment fees, plus statutory penalty and interest charges. 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. Although a company representative called staff and advised that the past due amount would be paid and the docket resolved, the company

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did not follow through. The fine amount recommended in this docket is consistent with amounts used for recent, similar violations.

This is the second docket opened against Pinnacle Telcom, Inc. for nonpayment of the RAF. On May 10, 1999, Order No. PSC-99-0919-AS-TX was issued in Docket No. 981963-TX, which accepted the company's \$100 settlement proposal. The Commission received the company's payment of the past due fees in full, plus the \$100 settlement, 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 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 Certificate No. 5269 should be cancelled administratively and the collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. The Order issued from this recommendation will become final upon issuance of a Consummating Order, 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. The docket should then be closed upon receipt of the fine and fees or cancellation of the certificate. (K. Peña; B. Keating)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is 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 the issuance of a Consummating Order and upon receipt of the fine and fees or cancellation of the certificate.