



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

DATE: OCTOBER 4, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *PIG* *PO*
DIVISION OF LEGAL SERVICES (ELLIOTT) *JPE* *BL*

RE: DOCKET NO. 011016-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 5663 ISSUED TO @XESS COMMUNICATIONS, INC. FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES, AND 25-24.480(2)(A) AND (B), F.A.C., RECORDS & REPORTS; RULES INCORPORATED.

AGENDA: 10/16/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\011016.RCM

CASE BACKGROUND

- **07/14/98** - This company obtained Florida Public Service Commission Certificate No. 5663.
- **01/31/00** - The Commission received the company's payment for the 1999 Regulatory Assessment Fee (RAF). The company reported revenues in the amount of \$150.00 for the period ended December 31, 1999.
- **12/12/00** - The Division of the Commission Clerk & Administrative Services mailed the 2000 RAF notice. Payment was due January 30, 2001.

DOCUMENT NUMBER-DATE

12409 OCT-10

FPSC-COMMISSION CLERK

- **02/21/01** - The Division of the Commission Clerk & Administrative Services mailed the delinquent notice.
- **07/24/01** - The Division of the Commission Clerk & Administrative Services notified technical staff that several pieces of mail addressed to the company had been returned to the Commission by the US Postal Service (USPS) stamped "attempted, not known" and "undeliverable as addressed."
- **08/16/01** - Staff wrote the company and advised that a docket had been established and to contact staff for its options. The USPS subsequently returned the letter stamped "forward order expired."
- **09/25/01** - As of this date, the Commission has not received payment of the company's 2000 RAF.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, 364.337, and 364.183, 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 @xess Communications, 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, Certificate No. 5663 should be canceled 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 25-24.474, 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 penalty and interest charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Staff was notified by the Division of the Commission Clerk & Administrative Services that the company had not paid its 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 25-24.474,

DOCKET NO. 011016-TI
DATE: OCTOBER 4, 2001

Florida Administrative Code. This fine amount is consistent with amounts imposed for recent, similar violations.

This is the second docket opened against @xess Communications, Inc. for nonpayment of the RAF. The first Docket, No. 991831-TI, was established for nonpayment of the 1998 RAF. On April 28, 2000, Order No. PSC-00-0853-AS-TI was issued, which accepted the company's proposal to pay future RAFs on a timely basis and its proposal to pay a \$100 contribution. The company subsequently paid the past due RAFs and the \$100 contribution and the docket was then closed.

Accordingly, staff recommends that the Commission assess 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, Certificate No. 5663 should be canceled administratively and the collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts.

ISSUE 2: Should the Commission impose a \$500 fine or cancel @xess Communications, Inc.'s certificate for apparent violation of Rule 25-24.480(2)(a) and (b), Florida Administrative Code, Records & Reports; Rules Incorporated?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel the company's certificate if the information required by Rule 25-24.480(2)(a) and (b), Florida Administrative Code, Records & Reports; Rules Incorporated, and fine 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 required information are not received, Certificate No. 5663 should be canceled administratively. (Isler)

STAFF ANALYSIS: Pursuant to Rule 25-24.480(2)(a) and (b), Florida Administrative Code, Records & Reports; Rules Incorporated, each company is allowed ten days after a change occurs to file updated information indicating any changes in the certificate holder's address (including street name and address, post office box, city), telephone number and any change in the name and address of the individual who is serving as primary liaison with the Commission.

The Division of the Commission Clerk & Administrative Services provided technical staff with copies of four pieces of correspondence mailed to the address on file in the Master Commission Directory. The mail was returned by the USPS as nondeliverable. Staff attempted to call the telephone number listed in the Master Commission Directory, but was unsuccessful. Staff then called Directory Assistance but was unsuccessful in obtaining another listing for this company. It has been well over ten days and staff has not been informed of the provider's correct mailing address, phone number, or liaison information, nor has the company requested cancellation of its certificate in compliance with Rule 25-24.474, Florida Administrative Code. This fine amount is consistent with amounts imposed for recent, similar violations.

Accordingly, staff recommends that the Commission assess a \$500 fine or cancel the company's certificate if the information required by Rule 25-24.480(2)(a) and (b), Florida Administrative Code, Records & Reports; Rules Incorporated, and fine 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 required information are not received, Certificate No. 5663 should be canceled administratively.

ISSUE 3: 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 fines, fees, and required information or cancellation of the certificate. (Elliott)

STAFF ANALYSIS: Whether staff's recommendation on Issues 1 and 2 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 issuance of a Consummating Order and upon receipt of the fines, fees, and required information or cancellation of the certificate.