

State of Florida



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

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COMMISSION
CLERK

DATE: OCTOBER 25, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *PIJ*
DIVISION OF LEGAL SERVICES (W. KNIGHT) *WJK*

RE: DOCKET NO. 011065-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 7580 ISSUED TO NEXT 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: 11/06/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\011065.RCM

CASE BACKGROUND

- 10/19/00 - This company was granted Florida Public Service Commission Certificate No. 7580.
- 12/12/00 - The Division of the Commission Clerk & Administrative Services mailed the 2000 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 30, 2001. The RAF notice was subsequently returned by the United States Postal Service (USPS) stamped "forward order expired."
- 02/09/01 - Staff called the telephone and fax numbers on file in the Master Commission Directory and received a fast busy on each number. Another call to the same numbers was made on

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February 16, 2001. Again, a fast busy was received. Staff then called Directory Assistance but was unsuccessful in obtaining a new listing for the company.

- **02/21/01** - The Division of the Commission Clerk & Administrative Services mailed the delinquent notice. The delinquent notice was subsequently returned by the USPS.
- **08/22/01** - Mr. Gil Cohen, Controller, called staff and stated that the address on file with the Commission is the correct address and could not explain why the USPS would return mail to the Commission. Mr. Cohen did state that the company's telephone numbers had changed and updated those numbers, along with the new president's name. Mr. Cohen requested that the form, along with the company's options, be faxed to him. Staff wrote the company the next day, August 23, 2001.
- **09/06/01** - The Commission received the company's payment for the 2000 RAF, along with the partial penalty and interest charges due. The company reported revenues in the amount of \$114,487 for the period ended December 31, 2000. In addition, the company proposed a settlement.
- **09/20/01** - Staff wrote the company and explained that staff could not recommend acceptance of its settlement with the outstanding penalty and interest balance. Staff requested a response by October 5, 2001.
- **10/17/01** - As of this date, the past due penalty and interest charge remains unpaid.

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 accept the settlement offer proposed by Next Communications, Inc. to resolve the apparent violation of Rules 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, and 25-24.480(2)(a) and (b), F.A.C., Records & Reports; Rules Incorporated?

RECOMMENDATION: No. The Commission should not accept the company's settlement offer, which proposed to pay a \$100 contribution and future regulatory assessment fees on a timely basis. Instead, the Commission should impose a \$500 fine or cancel the company's certificate if the fine and the 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 statutory penalty and interest charges are not received, the company's Certificate No. 7580 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; W. Knight)

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

The Division of the Commission Clerk & Administrative Services' records showed that the company had not paid its 2000 regulatory assessment fee, plus statutory penalty and interest

charges; therefore, this docket was established. The company subsequently paid the 2000 RAF, including a portion of the penalty and interest charges. In addition, the company proposed to pay a \$100 contribution and future RAFs on a timely basis. As of October 17, 2001, the Commission has not received the company's payment for the past due 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, Florida Administrative Code. This fine amount is consistent with amounts used for recent, similar violations.

Accordingly, staff recommends that the Commission should not accept the company's settlement offer, which proposed to pay a \$100 contribution and future regulatory assessment fees on a timely basis. Instead, the Commission should impose a \$500 fine or cancel the company's certificate if the fine and 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 statutory penalty and interest charges are not received, the company's Certificate No. 7580 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.

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. (W. Knight)

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 issuance of a Consummating Order and upon receipt of the fine and fees or cancellation of the certificate.