

State of Florida.



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

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

**DATE:** NOVEMBER 19, 2001

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

**FROM:** DIVISION OF COMPETITIVE SERVICES (ISLER) *PJC*  
DIVISION OF LEGAL SERVICES (K. PEÑA; B. KEATING; J. ELLIOTT) *PK*

**RE:** CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF  
ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE  
FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY  
ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

- DOCKET NO. 011220-TX - THE GRAND CONDOMINIUM ASSOCIATION, INC.
- DOCKET NO. 011223-TX - @XESS COMMUNICATIONS, INC.
- DOCKET NO. 011225-TX - CONVERGENCE, INC.
- DOCKET NO. 011226-TX - TOWER COMMUNICATIONS, INC. D/B/A UNITED SOUTHERN TELECOM
- DOCKET NO. 011227-TX - INTERCOM NETWORK, INC.
- DOCKET NO. 011242-TX - TALK TOO COMMUNICATIONS
- DOCKET NO. 011246-TX - TREASURECOM INC.
- DOCKET NO. 011247-TX - WIRELESS ACCESS NETWORK, INC.

**AGENDA:** 12/04/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\011220.RCM

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COMMISSION CLERK  
*PK*  
*Refer JAE*

CASE BACKGROUND

Each of the certificated providers listed on Attachment A were mailed the 2000 Regulatory Assessment Fee (RAF) notice. When full payment had not been received by the due date, the Division of the

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

DOCKET NOS. 011220-TX, 011223-TX, 011225-TX, 011226-TX, 011227-TX,  
011242-TX, 011246-TX, 011247-TX  
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Commission Clerk & Administrative Services mailed a delinquent letter to the companies. In addition, each of the companies were mailed a letter and asked to contact staff if interested in resolving their docket. As of November 7, 2001, none of the companies have paid the past due amount.

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.

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission impose a \$500 fine or cancel each company's respective certificate listed on Attachment A for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

**RECOMMENDATION:** Yes. The Commission should impose a \$500 fine or cancel each company's certificate as listed on Attachment A 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 certificate numbers listed on Attachment A 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 25-24.820, 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 the Commission Clerk & Administrative Services' records show that each of the companies listed on Attachment A had not paid its 2000 regulatory assessment fees, plus statutory penalty and interest charges. Therefore, it appears the

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companies have failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, and have not requested cancellation of their certificates in compliance with Rule 25-24.820, Florida Administrative Code. This fine is consistent with amounts imposed for recent, similar violations.

Accordingly, staff recommends that the Commission should impose a \$500 fine or cancel each company's certificate as listed on Attachment A 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 certificate numbers listed on Attachment A 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.

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**ISSUE 2:** Should these dockets be closed?

**RECOMMENDATION:** 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. These dockets should then be closed upon receipt of the fine and fees or cancellation of the certificate. A protest in one docket should not prevent the action in a separate docket from becoming final. (K. Peña; B. Keating; J. Elliott)

**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, these dockets should be closed upon receipt of the fine and fees or cancellation of the certificate. A protest in one docket should not prevent the action in a separate docket from becoming final.

## ATTACHMENT A

DOCKET NOS. 011220-TX, 011223-TX, 011225-TX, 011226-TX, 011227-TX,  
011242-TX, 011246-TX, 011247-TX

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<u>DOCKET NO.</u>	<u>PROVIDER</u> <u>LAST REPORTED REVENUES &amp; PERIOD COVERED</u>	<u>CERT.</u> <u>NO.</u>	<u>RAFs</u>	<u>P and I</u>
011220-TX	The Grand Condominium Assn., Inc. 1999 Revenues - \$0 For the Period Ended 12/31/99	6066	2000	2000
011223-TX	@Xess Communications, Inc. 1999 Revenues - \$20,282.91 For the Period Ended 12/31/99	7060	2000	2000
011225-TX	Convergence, Inc. 1999 Revenues - \$0 For the Period Ended 12/31/99	7065	2000	2000
011226-TX	United Southern Telecom 1999 Revenues - \$0 For the Period Ended 12/31/99	7063	2000	1999 2000
011227-TX	InterCom Network, Inc. 1999 Revenues - \$0 For the Period Ended 12/31/99	7234	2000	2000
011242-TX	Talk Too Communications 1999 Revenues - \$5,836.38 For the Period Ended 12/31/99	7102	2000	1999 2000
011246-TX	TreasureCom Inc. 1999 Revenues - \$0 For the Period Ended 12/31/99	7200	2000	1999 2000
011247-TX	Wireless Access Network, Inc. 1999 Revenues - \$0 For the Period Ended 12/31/99	7215	2000	2000