

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: FEBRUARY 7, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) & OFFICE OF GENERAL COUNSEL (K. PEÑA; B. KEATING) *KMP*

RE: DOCKET NO. 011100-TS - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF SHARED TENANT SERVICES TELECOMMUNICATIONS CERTIFICATE NO. 3479 ISSUED TO APEX PROFESSIONAL SERVICES, INC. FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 02/19/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\011100.RCM

RECEIVED 11:50 AM
02 FEB - 5 PM 3:47
COMMISSION CLERK
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CASE BACKGROUND

- 10/06/93 - This company obtained Florida Public Service Commission Shared Tenant Service (STS) Certificate No. 3479.
- 12/12/00 - The Division of the Commission Clerk & Administrative Services mailed the 2000 Regulatory Assessment Fee (RAF) notice. Payment was due January 30, 2001.
- 02/21/00 - The Division of the Commission Clerk & Administrative Services mailed the delinquent notice.
- 09/11/01 - Ms. Anita Killen called staff and requested the 2000 RAF return form and its options to resolve this docket.

DOCUMENT NUMBER-DATE

01393 FEB-5 2002

FPSC-COMMISSION CLERK

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The form and information were faxed to the company on the same date.

- **11/19/01** - This docket was deferred from the November 19, 2001 Agenda Conference.
- **01/25/02** - As of this date, the company has not paid the 2000 RAF, including statutory penalty and interest charges, or recontacted staff.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.339, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$500 fine or cancel Apex Professional Services, 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 \$500 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 seven (7) 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. 3479 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 25-24.572, 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. Although a representative of the company called staff and requested the 2000 RAF return form and its options for resolving this docket, which were provided, the company has not recontacted staff by paying the

past due RAF, including penalty and interest charges, requested cancellation of its certificate, or proposed a settlement. 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 25-24.572, 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 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 seven (7) 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. 3479 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: 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 receipt of the fine and fees or cancellation of the certificate.