

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:** FEBRUARY 7, 2002

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

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

**RE:** DOCKET NO. 011244-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 7166 ISSUED TO LEGENDS COMMUNICATIONS, 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\011244.RCM

CASE BACKGROUND

- 10/15/99 - This company was granted Florida Public Service Commission Certificate No. 7166.
- 12/12/00 - The Division of the Commission Clerk & Administrative Services mailed the 2000 RAF notice. Payment was due January 30, 2001.
- 02/21/01 - The Division of the Commission Clerk & Administrative Services mailed a delinquent notice to the company.

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- 10/01/01 - Staff wrote the company and explained a docket had been established for violation of the RAF rule and to contact staff if interested in resolving this docket.
- 10/11/01 - Ms. Rebecca Dean called on behalf of Legends Communications, Inc. Ms. Dean advised the past due balance would be paid and stated the company would "probably" propose a settlement.
- 11/15/01 - The Commission received the company's payment for the 2000 RAF, including penalty and interest charges. The company did not propose a settlement or request cancellation of its certificate. The company reported no revenues for the period ended December 31, 2000.
- 01/29/02 - As of this date, the company has neither proposed a settlement to resolve this docket nor requested cancellation of its certificate in compliance with Rule 25-24.474, 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 \$500 fine or cancel Legends 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 \$500 fine or cancel the company's certificate if the fine is 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 is not received, the company's Certificate No. 7166 should be cancelled administratively. (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 the company had not paid its 2000 regulatory assessment fee, plus statutory penalty and interest charges. Ms. Rebecca Dean called staff on October 11, 2001 and advised that the past due amount would be paid. However, the company did not follow through by proposing a settlement or requesting cancellation of its certificate to resolve this docket.

Although this company has now paid the past due RAFs, it still appears that it has failed to comply with Rule 25-4.0161, Florida Administrative Code, by not addressing its apparent non-compliance with the rule or propose a settlement. Legends Communications,

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Inc. also is the holder of Interexchange Carrier (IXC) Certificate No. 6094. In Docket No. 011027-TI, Order No. PSC-01-2487-PAA-TI issued on December 20, 2001, the Commission imposed a \$1,000 fine, then suspended the fine, conditioned upon timely payment of future RAFs. Docket No. 011027-TI was the second docket established for the same rule violation for Legends' IXC certificate. Both its IXC and ALEC certificates have been in effect since 1999 and the company has filed its returns and paid the RAFs late each year. In addition, as of February 6, 2002, the 2001 RAF, which was due January 30, 2002, has not been received for either certificate. Therefore, staff recommends that the company be fined. The fine amount recommended in this docket 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 fine is 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 is not received, the company's Certificate No. 7166 should be cancelled administratively.

**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 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 or cancellation of the certificate.