

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-

RECEIVED-FPSC
FEB - 7 AM 11:50
COMMISSION CLERK

DATE: FEBRUARY 7, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS AND ENFORCEMENT (PRUITT/T.WILLIAMS)
OFFICE OF THE GENERAL COUNSEL (B. KEATING/K. PEÑA/BANKS)
BK KMP PWB

RE: DOCKET NO. 011008-TI - APPLICATION FOR CERTIFICATE TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICE BY TELECUBA, INC.

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\011008.RCM

CASE BACKGROUND

On August 3, 2001, TELECUBA, INC. (TELECUBA) filed an application to provide interexchange telecommunications service (IXC) in Florida. Although not mentioned in the application, during staff's review it was discovered that TELECUBA had previously been involved in Docket No. 960217-TI, Initiation of Show Cause Proceeding for Violation of Rule 25-24.470, Florida Administrative Code, Certification of Public Convenience and Necessity Required.

In the Show Cause docket the Commission accepted TELECUBA's settlement offer of a \$7,000 contribution to the Florida General Revenue Fund, placement of advertisement indicating how to obtain a refund in the local media where cards were sold, and verification

DOCUMENT NUMBER-DATE

01490 FEB-78

FPSC-COMMISSION CLERK

of \$12,055.00 in refunds to affected customers of non-working cards. As part of the settlement offer TELECUBA explained that it was operating as a marketer and distributor of the cards and not as a reseller. The proposal also requested that the IXC application of World Long Distance, Inc. be promptly processed. Staff had withheld processing that application due to the show cause proceeding and because the sole office holder and shareholder was the same for TELECUBA and World Long Distance, Inc.

On July 30, 1997, World Long Distance, Inc.'s IXC certificate became active. On February 7, 2000, the certificate was canceled in Docket No. 991542-TI for nonpayment of Regulatory Assessment Fees for 1998 and for violation of Rule 25-24.480, Florida Administrative Code, which requires notification of any company address change.

On August 10, 2001, staff informed TELECUBA's application liaison office of the omission of the above information in the application. On September 25, 2001, revised application pages 8 and 9 were filed. The company also stated, "As set forth in the Application, as amended, TELECUBA is willing to pay to the Commission any outstanding fees, penalties, fines or interest accrued by World Long Distance, Inc., a former affiliate of the Applicant."

On October 30, 2001, staff sent a certified letter to the application liaison office expressing staff's concerns with the applicant's history with this Commission. On November 2, 2001, TELECUBA responded by stating that the company now had "an in house person dedicated to state and federal regulatory matters" and was contracting with an outside corporation to help manage regulatory matters. In the November response TELECUBA also mentioned its Section 214 authority from the Federal Communication Commission to provide international services and its License Agreement under the Cuban Assets Control Regulation of the United States Department of Treasury to negotiate for the provision of service between the United States and Cuba as proof of TELECUBA's "ability to operate within the rules and regulations as an interexchange company..."

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.335 and 364.337, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant TELECUBA, INC. a certificate to provide interexchange telecommunications service within the State of Florida as provided by Section 364.337(3), Florida Statutes?

PRIMARY STAFF RECOMMENDATION: No. TELECUBA, INC. should not be granted an interexchange telecommunications service certificate to operate within Florida. (Pruitt/B. Keating)

ALTERNATIVE STAFF RECOMMENDATION: Yes. If the \$1,000 fine imposed in Docket No. 991542-TI, Cancellation by Florida Public Service Commission of Interexchange Telecommunications Certificate 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) is paid within seven days of the issuance of the consummating order, TELECUBA, INC. should be granted **Interexchange Telecommunications Service Certificate Number 8055** to operate within Florida. If the fine is not timely received, the certificate should be deemed denied. (T. Williams/Banks)

PRIMARY STAFF ANALYSIS: Section 364.337(3), Florida Statutes, reads:

The Commission shall grant a certificate of authority to provide intrastate interexchange telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

TELECUBA, INC. filed an application with this Commission on August 3, 2001, to offer interexchange telecommunications service in Florida. A review of the history of this applicant indicates that one person is the sole office holder and shareholder of TELECUBA and an affiliate company, World Long Distance, Inc. Both companies have been involved in previous dockets involving rules violations.

In Docket No. 960217-TI, Initiation of Show Cause Proceeding for Violation of Rule 25-24.470, F.A.C., Certification of Public Convenience and Necessity Required, in the settlement offer TELECUBA requested that the Commission staff promptly process the IXC application of World Long Distance, Inc. In Docket No. 991542-TI, Cancellation by Florida Public Service Commission of Interexchange Telecommunications Certificate 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.) the Commission canceled the certificate of World Long Distance, Inc. on February 7, 2000, after the company failed to respond to the Commission's Proposed Agency Action Order. When the certificate was canceled, the company owed regulatory assessment fees for 1998, 1999, and 2000. On January 4, 2002, the Commission received the 1998, 1999, and 2000 regulatory assessment fees with penalties and interest for World Long Distance, Inc.

TELECUBA's November 2, 2001 response to staff's letter of concern indicated that the company now had an "in house person dedicated to state and federal regulatory matters." The "in house person" is a college student who also handles customer service and accounting matters. TELECUBA also stated that it was contracting with a Georgia corporation "to help manage the company's ongoing regulatory compliance matters..." Even with outside help, staff is concerned that TELECUBA may not be able to recognize which matters should be sent to the outside company.

Due to key historical omissions in TELECUBA's IXC application as originally filed, and questionable means for ensuring regulatory compliance, staff does not believe that the company has sufficient managerial capability to provide telecommunications service in Florida. Therefore, staff recommends that it is not in the public interest to grant a certificate to TELECUBA.

ALTERNATIVE STAFF ANALYSIS: The mistakes made by TELECUBA, INC. and World Long Distance, Inc. can be viewed as administrative in nature, instead of conscious violations of Commission rules and regulations.

In the November 2, 2001 letter to the Commission, the attorney for TELECUBA stated that the company was contracting with Telecom Compliance Services, Inc. for regulatory compliance matters and was willing to pay any outstanding fees, penalties, fines or interest owed by World Long Distance, Inc. The letter further stated, "The

DOCKET NO. 011008-TI
FEBRUARY 7, 2002

Commission has the company's assurances that all authorizations will be kept current, and there will be no further penalties or revocations."

On January 4, 2002, the Commission received the 1998, 1999, and 2000 regulatory assessment fees with penalties and interest for World Long Distance, Inc. By making payment in full for this affiliate, staff believes this demonstrates some level of accountability for these past infractions. In addition, TELECUBA has taken steps to improve its attention to regulatory matters by contracting with a third party for assistance as needed. If the \$1,000 fine issued in Docket No. 991542-TI is paid within seven days of the issuance of the consummating order, TELECUBA, INC. should be granted an interexchange telecommunications service certificate. If the fine is not timely received, the certificate should be deemed denied.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's primary recommendation in Issue 1, this docket should be closed upon the expiration of the protest period and issuance of a Consummating Order. If the Commission approves staff's alternative recommendation in Issue 1, this docket should be closed upon receipt of the fine, unless a person whose substantial interests are affected by the Commission's proposed agency action files a written protest within 21 days of the issuance date of the proposed agency action. If the fine is not timely received, the docket should be administratively closed and the certificate deemed denied. (B. Keating/Banks/K. Peña)

STAFF ANALYSIS: Whether staff's primary or alternative recommendation on Issue 1 is approved, the result will be a proposed agency action order. If the Commission approves staff's primary recommendation in Issue 1, this docket should be closed upon the expiration of the protest period and issuance of a Consummating Order. If the Commission approves staff's alternative recommendation in Issue 1, this docket should be closed upon receipt of the fine, unless a person whose substantial interests are affected by the Commission's proposed agency action files a written protest within 21 days of the issuance date of the proposed agency action. If the fine is not timely received, the docket should be administratively closed and the certificate deemed denied.