

State of Florida



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

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DATE: MAY 9, 2002
TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYÓ)
FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) OFFICE OF THE GENERAL COUNSEL (J. ELLIOTT)
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. 020286-TX - KEXA CORP D/B/A CAPITAL EXPLORATION
DOCKET NO. 020367-TX - EXARIO TELECOM, INC.

AGENDA: 05/21/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020286.RCM

CASE BACKGROUND

The companies listed on Attachment A were mailed the 2001 Regulatory Assessment Fee (RAF) return notice and payment was due by January 30, 2002. On February 20, 2002, the Office of the General Counsel mailed a delinquent notice for the 2001 RAF.

The Commission received correspondence from each of the companies listed on Attachment A, which requested cancellation of their respective certificates. Staff wrote each of the companies listed on Attachment A and explained that staff could not recommend a voluntary cancellation until each company complied with Rule 25-24.820, Florida Administrative Code. However, each of the

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companies listed on Attachment A have a past due amount and have not complied with Rule 25-24.820, 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 grant the companies listed on Attachment A a voluntary cancellation of their respective certificates?

RECOMMENDATION: No. The Commission should not grant the companies a voluntary cancellation of their respective certificates. The Commission should cancel each company's respective certificate on its own motion with an effective date as listed on Attachment A. The collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. If the certificates for each company as listed on Attachment A are cancelled in accordance with the Commission's Order from this recommendation, the respective companies should be required to immediately cease and desist providing alternative local exchange telecommunications services in Florida. (Isler)

STAFF ANALYSIS: 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.

Rule 25-24.820(2)(a), (b), (c), and (d), Florida Administrative Code, states:

(2) If a certificated company desires to cancel its certificate, it shall request cancellation from the Commission in writing and shall provide the following with its request. Cancellation of a certificate shall be ordered subject to the holder providing the required information.

(a) A statement of intent and date certain to pay regulatory assessment fee.

(b) A statement of why the certificate is proposed to be cancelled.

(c) A statement as to how customer deposits and final bills will be handled.

(d) Proof of individual customer notice regarding discontinuance of service.

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Although each of the companies listed on Attachment A requested cancellation of their respective certificates, the companies have past due RAFs.

Kexa Corp d/b/a Capital Exploration - Docket No. 020286-TX

On December 24, 2001, the Commission received a letter from this company requesting cancellation of its certificate as it was no longer in business. On January 17, 2002, staff wrote the company and explained that prior to granting a voluntary cancellation, the company must pay the 2001 RAF. On March 8, 2002, Mr. Aixa Schulte, President, called staff to discuss staff's letter. Mr. Schulte understands that a voluntary cancellation cannot be recommended with an outstanding balance of the RAF. As of April 29, 2002, the past due amount has not been paid and the company has not complied with Rule 25-24.820, Florida Administrative Code.

Exario Telecom, Inc. - Docket No. 020367-TX

On March 29, 2002, the Commission received a letter from Mr. John C. Dodge, the company's attorney, requesting cancellation of Exario Telecom, Inc.'s certificate. On April 1, 2002, staff wrote the company and explained that prior to granting a voluntary cancellation, the company must either pay the 2002 RAF or provide a date certain it would be paid. Ms. Julie Gordy with Mr. Dodge's office advised staff on April 19, 2002, that since the company has no funds to pay the RAF, the Commission should cancel the company's certificate on its own motion.

Accordingly, staff believes the Commission should cancel each company's respective certificate on its own motion with an effective date as listed on Attachment A. The collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. If the certificates for each company as listed on Attachment A are cancelled in accordance with the Commission's Order from this recommendation, the respective companies should be required to immediately cease and desist providing alternative local exchange telecommunications services in Florida.

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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 issuance of a Consummating Order. A protest in one docket should not prevent the action in a separate docket from becoming final. (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 issuance of a Consummating Order. A protest in one docket should not prevent the action in a separate docket from becoming final.

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ATTACHMENT A

<u>DOCKET NO.</u>	<u>PROVIDER LAST REPORTED REVENUES & PERIOD COVERED</u>	<u>CERT. NO.</u>	<u>Effective Date of Cancellation</u>
020286-TX	Capital Exploration \$0 Revenues for Period Ended 12/31/00	5659	12/24/01
020367-TX	Exario Telecom, Inc. \$0 Revenues for Period Ended 12/31/01	7991	03/29/02