

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: May 9, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS) DBB  
OFFICE OF THE GENERAL COUNSEL (DODSON) JWD LK

RE: DOCKET NO. 020385-TI - CANCELLATION BY FLORIDA PUBLIC  
SERVICE COMMISSION OF INTEREXCHANGE CERTIFICATE NO. 7233  
ISSUED TO STERLING TIME COMPANY D/B/A STC FOR APPARENT  
VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY  
ASSESSMENT FEES, 25-4.043, F.A.C., RESPONSE TO COMMISSION  
STAFF INQUIRIES, AND 25-24.480, F.A.C., RECORDS AND  
REPORTS, RULES INCORPORATED.

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\020385.RCM

CASE BACKGROUND

- November 12, 1999 - The Commission granted Sterling Time Company d/b/a STC (STC) Certificate No. 7233 to provide interexchange company (IXC) telecommunications service in the State of Florida.
- November 7, 2001 - Staff sent a certified letter via U.S. Mail to STC requesting information regarding a prepaid phone card labeled as *The Florida Penny Card* for which STC is listed as the prepaid calling service provider. A written reply was due November 26, 2001.

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- November 15, 2001 - Staff received the green card receipt which indicated that a company representative received the letter on November 13, 2001. Staff was also contacted by STC's executive secretary who informed staff that STC was not the service provider for *The Florida Penny Card*. Staff then contacted the distributor listed on the back of *The Florida Penny Card*, and contrary to STC's position, the distributor informed staff that he was contacted by STC and the company instructed him to remove all *The Florida Penny Card* stock from retail outlets as the phone cards were no longer active. Staff confirmed that the access number on *The Florida Penny Card* did not work.
- November 16, 2001 - Staff sent a second certified letter to STC via U.S. Mail. Staff requested further information regarding the discontinuance of service for *The Florida Penny Card*. A written reply was due November 26, 2001.
- December 3, 2001 - Staff received the green card receipt which indicated that Mr. Ronald Schmidt, a corporate officer of STC, received the certified letter, but no delivery date was listed.
- December 12, 2001 - Staff mailed the 2001 Regulatory Assessment Fee (RAF) form to the company.
- December 18, 2001 - Staff discovered that STC filed an Amendment to its Articles of Corporation with the Florida Department of State on November 6, 2001, and changed its name to Fusion Telecom, Inc., and installed Mr. Ronald L. Schmidt, Jr. as the new Director/President of the company.
- February 12, 2002 - Staff mailed a third certified letter via U.S. Mail, addressed to Mr. Ronald L. Schmidt, Jr., at Fusion Telecom, Inc. (f.k.a. Sterling Time Company d/b/a STC). The letter requested that STC update its contact information and request a name change.
- February 20, 2002 - General Counsel sent, via certified mail, a 2001 RAF delinquent notice to the company.
- March 12, 2002 - The third certified letter was returned unopened and unclaimed by the recipient.

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- March 13, 2002 - Staff sent Mr. Ronald Schmidt a facsimile of the letter dated February 12, 2002, to the fax number listed in the Master Commission Directory (MCD). A response was due on March 25, 2002.
- April 29, 2002 - Staff opened this docket to cancel STC's certificate for failing to pay 2001 RAFs, failure to respond to Commission staff's inquiries, and failure to update records on file with the Commission.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.183, 364.336, 364.337, and 364.285, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission cancel IXC Certificate No. 7233 issued to Sterling Time Company, Inc. d/b/a STC for apparent violation of Rule Nos. 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and 25-24.480, Florida Administrative Code, Records and Reports, Rules Incorporated?

**RECOMMENDATION:** Yes. Staff recommends that the Commission should cancel IXC Certificate No. 7233 issued to STC for apparent violation of Rule Nos. 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and 25-24.480, Florida Administrative Code, Records and Reports, Rules Incorporated. If the Proposed Agency Action Order is not protested within 21 days of issuance, the company's certificate should be cancelled administratively upon issuance of the Consummating Order. If STC's certificate is cancelled in accordance with the Commission's Order from this recommendation, STC should be required to immediately cease and desist providing IXC telecommunications services in Florida. If the past due regulatory assessment fees, including statutory penalty and interest charges, are not received within fourteen calendar days after issuance of the Consummating Order, the amount shall be forwarded to the Office of the Comptroller for collection. **(Buys, Dodson)**

**STAFF ANALYSIS:** Pursuant to Section 364.285, Florida Statutes, the Commission may impose a penalty or revoke a company's certificate if a company refuses to comply with Commission rules. Rule 25-24.474(1)(b), Florida Administrative Code, Cancellation of a Certificate, provides that the Commission may on its own motion cancel a company's certificate for violation of a Commission rule or order. STC has apparently violated three of the Commission's rules.

1. Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of RAFs 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.

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The Division of Commission Clerk and Administrative Services' records show that STC has not paid its 2001 RAF, plus statutory penalty and interest charges. RAFs for the calendar year 2001 were due by January 30, 2002, and those fees are currently unpaid. Consequently, it appears that STC has not complied with Rule 25-4.0161, Florida Administrative Code.

2. Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Staff has given STC several opportunities to reply to inquiries regarding *The Florida Penny Card* and its prepaid calling service. Staff mailed STC several certified letters inquiring about the company's service and attempted to call the company several times. STC has not provided staff with a written reply to its inquiries in apparent violation of Rule 25-4.043, Florida Administrative Code.

3. Rule 25-24.480(2), Florida Administrative Code, Records and Reports, Rules Incorporated, states:

(2) Each company shall file updated information for the following items with the Division of Competitive Markets and Enforcement and the Division of the Commission Clerk and Administrative Services within 10 days after such changes occur.

(a) The address of the certificate holder's main corporate and Florida offices (if any) including street name and address and post office box, city, state, and zip code.

(b) Telephone number, name, and address of the individual who is to serve as primary liaison with the Commission in regards to the ongoing Florida operations of the certified company.

According to records on file with the Florida Department of State, Division of Corporations, on November 6, 2001, STC filed an amendment to its Articles of Corporation to change its name from

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STC to Fusion Telecom, Inc., remove Mr. Scott Aadal as director of the company, and install Mr. Ronald L. Schmidt, Jr. as the new Director/President. The documents indicate that Mr. Aadal has resigned from the company. Mr. Aadal is the person listed in the MCD as the primary liaison for the company, but apparently is no longer employed by STC. The company apparently failed to update its primary liaison information within ten days as required by Rule 25-24.480(2)(b), Florida Administrative Code.

Furthermore, staff attempted to contact the company using the information listed in the MCD. Staff confirmed that the company's telephone number is currently not in service. Also, certified mail sent to the company's mailing address was returned unclaimed. Consequently, it appears that the company has either moved or ceased doing business under the name STC.

Staff's recommendation and the actions proposed in this docket are consistent with previous actions. In Docket No. 010096-TC the Commission cancelled Royal Payphone Inc.'s pay telephone certificate for failing to pay RAFs, failing to update its contact information, and failing to respond to staff's inquiries.

Based on the aforementioned, staff recommends that the Commission should cancel IXC Certificate No. 7233 issued to STC for apparent violation of Rule Nos. 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and 25-24.480, Florida Administrative Code, Records and Reports, Rules Incorporated. If the Proposed Agency Action Order is not protested within 21 days of issuance, the company's certificate should be cancelled administratively upon issuance of the Consummating Order. If STC's certificate is cancelled in accordance with the Commission's Order from this recommendation, STC should be required to immediately cease and desist providing IXC telecommunications services in Florida. If the past due regulatory assessment fees, including statutory penalty and interest charges, are not received within fourteen calendar days after issuance of the Consummating Order, the amount should be forwarded to the Office of the Comptroller for collection.

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**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. This docket should then be closed and IXC Certificate No. 7233 should be cancelled. **(Dodson)**

**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 the issuance of the Consummating Order and cancellation of IXC Certificate No. 7233.