

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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MAY - 9 AM 10:19
COMMISSION CLERK

DATE: MAY 9, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) OFFICE OF THE GENERAL COUNSEL (J. ELLIOTT) *JFE*

RE: DOCKET NO. 011014-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 3505 ISSUED TO XO FLORIDA, INC. FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

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

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\011014.RCM

CASE BACKGROUND

- 06/13/98 - This company obtained Florida Public Service Commission Interexchange Company (IXC) Certificate No. 3505.
- 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.
- 02/20/01 - The Division of the Commission Clerk & Administrative Services mailed a delinquent notice.
- 08/03/01 - This docket was established for nonpayment of the 2000 RAF, including statutory penalty and interest charges.

DOCUMENT NUMBER-DATE

05010 MAY-98

FPSC-COMMISSION CLERK

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- **08/07/01** - Ms. Vicki Kaufman, attorney, called staff and asked that the company's options to resolve this docket be faxed to her. Options were faxed the same date. Ms. Kaufman stated that the company had filed its 2000 alternative local exchange company (ALEC) RAF return and included the IXC revenues on it. She also advised that Commission staff was conducting an audit of this company's 1999 and 2000 RAFs.
- **08/08/01** - Ms. Dana Shaffer, Vice President/Regulatory Counsel for XO Florida, Inc., called staff. Staff advised Ms. Shaffer to file the 2000 RAF return, along with the payment, and state that the IXC revenues were included on the ALEC return.
- **08/30/01** - The Commission received the company's 2000 RAF return. The company reported no revenues for calendar year 2000 since the company's total revenues (local and long distance) were reported on its ALEC return.
- **12/21/01** - Staff completed its audit of XO Florida, Inc.'s IXC and ALEC returns for calendar years 1999 and 2000 and determined that the company owed an additional \$19,623.72, plus interest charges.
- **03/01/02** - The Division of the Commission Clerk & Administrative Services billed the company for the additional charges.
- **03/26/02** - The Commission received the company's payment in the amount of \$22,533.92, which included interest charges. The adjusted IXC revenues for calendar year 2000 were \$7,621,240.
- **04/30/02** - The Commission received the company's settlement proposal.

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 accept the settlement offer proposed by XO Florida, Inc. to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should accept the company's settlement proposal to work with staff to insure that future regulatory assessment fees are timely and accurately filed. (Isler)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, 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.

According to Commission records, the company had not submitted the regulatory assessment fee for calendar year 2000, along with statutory penalty and interest charges. Therefore, staff established this docket. After the docket was opened, the company's attorney contacted staff and advised that the company's 2000 revenues were included on its ALEC RAF return. The company subsequently completed the IXC 2000 RAF return and remitted payment for the minimum, including penalty and interest charges.

The Commission's Division of Auditing and Safety completed an audit of the company's 1999 and 2000 RAF returns for both its IXC and ALEC certificates. According to the audit report, the company could not provide support of the numbers used for the amounts paid to other carriers; therefore, no deduction was allowed. The Commission billed the company an additional \$22,533.92, including interest charges, which has now been paid in full by XO Florida, Inc.

On April 30, 2002, the Commission received a letter from Ms. Dana Shaffer, Vice President/Regulatory Counsel for XO Florida, Inc. Ms. Shaffer stated that the company's IXC revenues were included on its ALEC 2000 RAF return and that as soon as they were made aware that a RAF return had to be filed for each certificate, the company filed the IXC 2000 RAF return showing no revenues pending the completion of the Commission's audit. After the completion of the audit and a subsequent bill from the Commission

for the additional amount due was received, Ms. Shaffer advised that the company paid the additional charges. Ms. Shaffer further advised that the company would work with Commission staff to see that future RAF payments are both timely and accurately filed for each certificate and requested that no further monetary penalty be assessed.

Staff believes that due to the extenuating circumstances, it would serve no purpose to further penalize the company. Ms. Shaffer has proposed to pay future RAFs on a timely basis and followed up this promise by paying the 2001 RAF timely for both certificates.

Accordingly, staff believes the Commission should accept the company's settlement proposal to work with staff to insure that future regulatory assessment fees are timely and accurately filed.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, this docket should be closed. (J. Elliott)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.