



Public Service Commission
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DATE: MAY 9, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (FONDO) AF
OFFICE OF THE GENERAL COUNSEL (TEITZMAN) R

RE: DOCKET NO. 020268-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 7814 ISSUED TO WEST END COMMUNICATIONS INC. FOR APPARENT VIOLATIONS OF RULES 25-4.0161(1), F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES; 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES; AND 25-24.480(2), 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\020268.RCM

CASE BACKGROUND

- May 30, 2001 - West End Communications Inc. (West End) obtained Florida Public Service Commission Interexchange Company (IXC) Certificate No. 7814.
- January 8, 2002 - February 22, 2002 - The Division of Consumer Affairs received three complaints regarding West End's prepaid phone cards being out of service and the company being unreachable.
- January 24, 2002 - Staff mailed a certified letter to West End requesting information based on the results of a test staff

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

DATE: May 9 ,2002

conducted on prepaid calling cards branded Tropical Wave and 2 Way USA. The certified letter was returned by the United States Post Office indicating the occupant had moved, leaving no forwarding address.

- February 14, 2002 - Staff contacted Mr. Ronald Davis, Attorney for West End, regarding a customer complaint. Mr. Davis stated that the company was no longer in business. Staff provided instructions on how to cancel the company's IXC certificate. On the same day, Mr. Martin Kalchstein, the company President, contacted staff and stated he would personally reimburse the customer who filed the complaint.
- February 20, 2002 - The Division of the Commission Clerk & Administrative Services mailed a delinquency notice, certified, to West End for failure to pay the 2001 Regulatory Assessment Fees. The certified letter was returned by the United States Post Office.
- March 25, 2002 - Staff again contacted Mr. Ronald Davis, informing him that Mr. Kalchstein neither filed the paperwork to cancel the certificate, nor responded to the consumer complaint. In addition, staff faxed Mr. Davis two additional complaints consumers filed against West End.
- March 26, 2002 - After not receiving a voluntary cancellation request from West End, responses to the consumer complaints and staff's inquiries, and no payment for the 2001 RAF, staff opened this docket to cancel West End's IXC Certificate No. 7814.

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

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission cancel West End's IXC Certificate No. 7814 for apparent violations of Rule Nos. 25-4.0161(1), Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and 25-24.480(2), Florida Administrative Code, Records and Reports; Rules Incorporated?

RECOMMENDATION: Yes. Staff recommends that the Commission cancel West End's IXC Certificate No. 7814 for apparent violations 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(2), 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 canceled administratively upon issuance of the Consummating Order. If West End's certificate is canceled in accordance with the Commission's Order from this recommendation, West End should be required to immediately cease and desist providing IXC telecommunications service 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. (FONDO, TEITZMAN)

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 25-24.514(1)(b), Florida Administrative Code, states the Commission may cancel a company's certificate for violation of Commission rules or orders. West End 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 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.

DATE: May 9 ,2002

The Division of the Commission Clerk and Administrative Services records show that West End 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 West End has not complied with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

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 attempted to contact West End on several occasions regarding consumer complaints and staff tests of the company's prepaid calling services. Staff mailed letters to the address listed in the Master Commission Directory (MCD) and attempted to send facsimiles to the number listed in MCD. All letters were returned by the United States Postal Service with "returned to sender" stamped on the front of the envelopes and the telephone numbers for facsimile, as well as voice, were not in service.

On February 14, 2002, staff spoke with Mr. Martin Kalchstein, the company President, who stated that he would personally reimburse the Florida consumer that filed a complaint. Staff has not received any communication from West End and none of the consumer complaints have been addressed.

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

(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

DATE: May 9 ,2002

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 certificated company.

The last update entered into the MCD was on May 30, 2001. All correspondence sent to West End at the address listed in the MCD were returned by the United States Post Office. Through conversations with the company President, Mr. Martin Kalchstein and the Attorney, Mr. Ronald Davis, staff learned that the company has completely dissolved.

Apparently, the company's mailing address, name and telephone number of the individual responsible for contact with the Commission is incorrect, and has been since at least February 14, 2002. West End has not filed the required updated information with the Commission within ten days of the change, and is therefore in apparent violation of Rule 25-24.480(2), Florida Administrative Code, Records and Reports; Rules Incorporated.

Staff's recommendation and the actions proposed in this docket are consistent with previous actions. In Docket No. 010096-TC the Commission issued Order No. PSC-01-1031-PAA-TC on April 26, 2001, cancelling 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 above, staff believes that the Commission should cancel West End's IXC Certificate No. 7814 for apparent violations 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(2), 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 canceled administratively upon issuance of the Consummating Order. If West End's certificate is canceled in accordance with the Commission's Order from this recommendation, West End should be required to immediately cease and desist providing IXC telecommunications service in Florida. If the past due regulatory assessment fees, including statutory penalty and interest charges, are not received within fourteen calendar days

DOCKET NO. 020268-TI

DATE: May 9 ,2002

after issuance of the Consummating Order, the amount shall be forwarded to the Office of the Comptroller for collection.

DOCKET NO. 020268-TI
DATE: May 9 ,2002

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 West End's IXC Certificate No. 7814 should be canceled.
(TEITZMAN)

STAFF ANALYSIS: Whether staff's recommendation 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 West End's IXC Certificate No. 7814.