

State of Florida



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

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COMMISSION CLERK

DATE: JUNE 27, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *KS*  
OFFICE OF THE GENERAL COUNSEL (K. PEÑA; B. KEATING) *BP*  
*KMP*

RE: DOCKET NO. 020478-TX - CANCELLATION BY FLORIDA PUBLIC  
SERVICE COMMISSION OF ALEC CERTIFICATE NO. 7721 ISSUED TO  
POSITIVE INVESTMENTS, INC. FOR VIOLATION OF RULE 25-  
4.0161, F.A.C., REGULATORY ASSESSMENT FEES;  
TELECOMMUNICATIONS COMPANIES.

AGENDA: 07/09/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020478.RCM

CASE BACKGROUND

- 01/18/01 - This company obtained Florida Public Service Commission Alternative Local Exchange Company (ALEC) Certificate No. 7721.
- 12/12/01 - The Division of the Commission Clerk & Administrative Services mailed the 2001 Regulatory Assessment Fee (RAF) return form. Payment was due by January 30, 2002.
- 02/21/02 - The Office of the General Counsel mailed a delinquent notice for nonpayment of the 2001 RAF.
- 04/10/02 - The Commission received a letter, via fax, from Mr. Kendall B. Howell, Manager, advising that Positive Investments, Inc. was no longer in business and asked that the

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Commission stop faxing PSC hearing information because it was wasting their time and paper.

- **04/12/02** - Staff wrote the company a letter and explained that the Commission had not received a letter requesting cancellation and explained that the 2001 RAF, including statutory penalty and interest charges, needed to be paid and that the company needed to either pay the 2002 RAF or provide a date certain it would be paid. Staff requested a response by April 30, 2002.
- **06/19/02** - As of this date, the company has not paid the past due amount or contacted staff.

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 Positive Investments, Inc. a voluntary cancellation of ALEC Certificate No. 7721?

**RECOMMENDATION:** No. The Commission should not grant the company a voluntary cancellation of its certificate. The Commission should cancel the company's ALEC Certificate No. 7721 on its own motion, effective April 10, 2002. The collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. If the certificate is cancelled in accordance with the Commission's Order from this recommendation, the company 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, or the next business day, 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.

On April 10, 2002, the Division of the Commission Clerk & Administrative Services received a letter from the company's General Manager, Kendall B. Howell, which advised that the company

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was no longer in business. Staff wrote the company on April 12, 2002, and advised that in order to be granted a voluntary cancellation, the company must pay the past due 2001 RAF, including statutory penalty and interest charges, and comply with Rule 25-24.820, Florida Administrative Code. As of June 19, 2002, the company has not paid the 2001 RAF nor provided a date certain the 2002 RAF would be paid.

Accordingly, the Commission should not grant the company a voluntary cancellation of its certificate. The Commission should cancel the company's ALEC Certificate No. 7721 on its own motion, effective April 10, 2002. The collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. If the certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing alternative local exchange telecommunications services in Florida.

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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 issuance of the Proposed Agency Action Order. The docket should then be closed upon issuance of a Consummating Order. (K. Peña; B. Keating)

**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 issuance of a Consummating Order.