



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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pxi*
OFFICE OF THE GENERAL COUNSEL (TEITZMAN) *TC*

RE: DOCKET NO. 020569-TX - CANCELLATION BY FLORIDA PUBLIC
SERVICE COMMISSION OF ALEC CERTIFICATE NO. 5480 ISSUED TO
AXSYS, INC. D/B/A AXSYS, INC./TEL PTNS. FOR VIOLATION OF
RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES;
TELECOMMUNICATIONS COMPANIES.

AGENDA: SEPTEMBER 3, 2002 - REGULAR AGENDA - PROPOSED AGENCY
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020569.RCM

CASE BACKGROUND

- 11/11/97 - This company was granted Florida Public Service Commission ALEC Certificate No. 5480.
- 12/20/99 - Docket No. 991968-TX was established for nonpayment of the 1998 Regulatory Assessment Fee (RAF). On April 28, 2000, Order No. PSC-00-0848-AS-TX was issued, which accepted the company's \$100 settlement. The company paid the past due RAF and \$100 settlement and the docket was closed.
- 01/30/01 - The Commission received the company's 2000 RAF. The company reported revenues in the amount of \$11,206 for the period ended December 31, 2000.

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PSC-COMMISSION CLERK

DOCKET NO. 020569-TX

DATE: 08/22/02

- **12/12/01** - The Division of the Commission Clerk & Administrative Services mailed the 2001 RAF notice. Payment was due January 30, 2002.
- **02/21/02** - The Office of the General Counsel mailed a delinquent notice to the company via certified mail. The US Postal Service returned the receipt, which showed the delinquent notice was signed for and delivered.
- **04/24/02** - Staff wrote the company and explained that payment for the 2001 RAF had still not been received. Staff explained that in order to avoid a docket being established, payment should be received within 15 working days.
- **08/14/02** - As of this date, the company has not paid the past due amount or requested cancellation of its certificate in compliance 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 impose a \$1,000 penalty or cancel Axsys, Inc. d/b/a Axsys, Inc./Tel Ptns.' certificate for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$1,000 penalty or cancel the company's certificate if the penalty and the regulatory assessment fees, including statutory penalty and interest charges, are not received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the penalty and regulatory assessment fees, including statutory penalty and interest charges, are not received, the company's Certificate No. 5480 should be cancelled administratively and the collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. If Axsys, Inc. d/b/a Axsys, Inc./Tel Ptns.' certificate is cancelled in accordance with the Commission's Order from this recommendation, Axsys, Inc. d/b/a Axsys, Inc./Tel Ptns. should be required to immediately cease and desist providing alternative local exchange services in Florida. (Isler; Teitzman)

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a penalty or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.820, Florida Administrative Code, establishes the requirements for cancellation of a certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

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.

The Division of the Commission Clerk & Administrative Services' records show that the company had not paid its 2001

DOCKET NO. 020569-TX

DATE: 08/22/02

regulatory assessment fee, plus statutory penalty and interest charges. In addition, staff wrote the company and advised that payment of the 2001 RAF should be paid within 15 working days to avoid a docket from being established.

As of August 14, 2002, Axsys, Inc. d/b/a Axsys, Inc./Tel Ptns. has not paid the past due RAF, including statutory penalty and interest charges, requested cancellation of its certificate as required in Rule 25-24.820, Florida Administrative Code. Therefore, it appears the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. The penalty amount recommended in this docket is consistent with amounts imposed for recent, similar violations.

This is the second docket opened against Axsys, Inc. d/b/a Axsys, Inc./Tel Ptns. for nonpayment of the RAF. On April 28, 2000, Order No. PSC-00-0848-AS-TX was issued in Docket No. 991968-TX. The Order accepted the company's \$100 settlement proposal. The company subsequently paid the past due RAFs and the \$100 settlement and the docket was then closed.

Accordingly, staff recommends that the Commission assess a \$1,000 penalty for failure to comply with the Commission rules or cancel the company's certificate if the penalty and the regulatory assessment fees, along with statutory penalty and interest charges, are not paid within fourteen (14) calendar days after the issuance of the Consummating Order. The penalty should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the penalty and regulatory assessment fees, including statutory penalty and interest charges, are not received, the company's Certificate No. 5480 should be cancelled administratively and the collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. If Axsys, Inc. d/b/a Axsys, Inc./Tel Ptns.' certificate is cancelled in accordance with the Commission's Order from this recommendation, Axsys, Inc. d/b/a Axsys, Inc./Tel Ptns. should be required to immediately cease and desist providing alternative local exchange services in Florida.

DOCKET NO. 020569-TX

DATE: 08/22/02

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. The docket should then be closed upon receipt of the penalty and fees or cancellation of the certificate. (Teitzman)

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 receipt of the penalty and fees or cancellation of the certificate.