

State of Florida



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

-M-E-M-O-R-A-N-D-U-M-

DATE: SEPTEMBER 19, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pig* *de*
OFFICE OF THE GENERAL COUNSEL (ELLIOTT; TEITZMAN; W. KNIGHT; DODSON) *WOK JAE* *de*

RE: CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALEC CERTIFICATE FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES, AND 25-24.835, F.A.C., RULES INCORPORATED.

DOCKET NO. 020600-TX - NTEGRITY TELECONTENT SERVICES INC.
DOCKET NO. 020603-TX - SIGMA NETWORKS TELECOMMUNICATIONS, INC.
DOCKET NO. 020621-TX - TELICOR INC.
DOCKET NO. 020624-TX - BROADBAND2WIRELESS US, INC.
DOCKET NO. 020626-TX - NXGEN NETWORKS, INC.
DOCKET NO. 020629-TX - ZEPHION NETWORKS COMMUNICATIONS, INC.

AGENDA: 10/01/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020600.RCM

CASE BACKGROUND

Each of the certificated providers listed on Attachment A were mailed the 2001 Regulatory Assessment Fee (RAF) return notice. When payment had not been received by the due date, the Office of the General Counsel mailed a delinquent notice to the companies via

DOCUMENT NUMBER 0000

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FPSC-COMMISSION CLERK

DOCKET NOS. 020600-TX, 020603-TX, 020621-TX, 020624-TX, 020626-TX, 020629-TX

DATE: SEPTEMBER 19, 2002

certified mail. As of September 3, 2002, none of the companies have paid the past due amount.

In addition, other correspondence to the companies listed on Attachment A was returned by the United States Postal Service (USPS).

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

DOCKET NOS. 020600-TX, 020603-TX, 020621-TX, 020624-TX, 020626-TX, 020629-TX

DATE: SEPTEMBER 19, 2002

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$500 penalty or cancel each company's respective certificate as listed on Attachment A for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$500 penalty or cancel each company's respective certificate as listed on Attachment A 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 certificate numbers listed on Attachment A 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 a company's certificate, as listed on Attachment A, is cancelled in accordance with the Commission's Order from this recommendation, the respective company should be required to immediately cease and desist providing alternative local exchange services in Florida. (Isler; Elliott; Teitzman; W. Knight; Dodson)

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 penalty and interest charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

DOCKET NOS. 020600-TX, 020603-TX, 020621-TX, 020624-TX, 020626-TX, 020629-TX

DATE: SEPTEMBER 19, 2002

Staff was notified by the Division of the Commission Clerk & Administrative Services that each of the providers listed on Attachment A had not paid their 2001 regulatory assessment fees, plus statutory penalty and interest charges. Therefore, it appears the companies have failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, and have not requested cancellation of their respective certificates in compliance with Rule 25-24.820, Florida Administrative Code. This penalty amount is consistent with amounts imposed for recent, similar violations.

Accordingly, staff recommends that the Commission assess a \$500 penalty or cancel each company's respective certificate as listed on Attachment A 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 certificate numbers listed on Attachment A 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 a company's certificate, as listed on Attachment A, is cancelled in accordance with the Commission's Order from this recommendation, the respective company should be required to immediately cease and desist providing alternative local exchange services in Florida.

DOCKET NOS. 020600-TX, 020603-TX, 020621-TX, 020624-TX, 020626-TX, 020629-TX

DATE: SEPTEMBER 19, 2002

ISSUE 2: Should the Commission impose a \$500 penalty or cancel each company's respective certificate as listed on Attachment A for apparent violation of Rule 25-24.835, Florida Administrative Code, Rules Incorporated?

RECOMMENDATION: Yes. The Commission should impose a \$500 penalty or cancel each company's respective certificate as listed on Attachment A if the information required by Rule 25-24.835, Florida Administrative Code, Rules Incorporated, and penalty 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 required information are not received, the certificate numbers listed on Attachment A should be cancelled administratively. If a company's certificate, as listed on Attachment A, is cancelled in accordance with the Commission's Order from this recommendation, the respective company should be required to immediately cease and desist providing alternative local exchange services in Florida. (Isler; Elliott; Teitzman; W. Knight; Dodson)

STAFF ANALYSIS: Pursuant to Rule 25-24.835, Florida Administrative Code, Reporting Requirements, each company is allowed ten days after a change occurs to file updated information indicating any changes in the certificate holder's address (including street name and address, post office box, city), telephone number and any change in the name and address of the individual who is serving as primary liaison with the Commission. Mail sent to each company listed on Attachment A was returned to the Commission by the USPS. It has been well over ten days and staff has not been informed of the providers' correct mailing addresses, phone numbers, or liaison information, nor have any of the companies listed on Attachment A requested cancellation of their respective certificate in compliance with Rule 25-24.820, Florida Administrative Code. In addition, staff attempted to call each company, but was unsuccessful. This penalty amount is consistent with amounts imposed for recent, similar violations.

Accordingly, staff recommends that the Commission assess a \$500 penalty or cancel each company's respective certificate as

DOCKET NOS. 020600-TX, 020603-TX, 020621-TX, 020624-TX, 020626-TX, 020629-TX

DATE: SEPTEMBER 19, 2002

listed on Attachment A if the information required by Rule 25-24.835, Florida Administrative Code, and penalty 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 required information are not received, the certificate numbers listed on Attachment A should be cancelled administratively. If a company's certificate, as listed on Attachment A, is cancelled in accordance with the Commission's Order from this recommendation, the respective company should be required to immediately cease and desist providing alternative local exchange services in Florida.

DOCKET NOS. 020600-TX, 020603-TX, 020621-TX, 020624-TX, 020626-TX, 020629-TX

DATE: SEPTEMBER 19, 2002

ISSUE 3: Should these dockets 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 dockets should then be closed upon receipt of the penalties, fees, and required information or cancellation of each company's respective certificate. A protest in one docket should not prevent the action in a separate docket from becoming final. (Elliott; Teitzman; W. Knight; Dodson)

STAFF ANALYSIS: Whether staff's recommendation on Issues 1 and 2 are 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, these dockets should be closed upon receipt of the penalties, fees, and required information, or cancellation of each company's respective certificate. A protest in one docket should not prevent the action in a separate docket from becoming final.

DOCKET NOS. 020600-TX, 020603-TX, 020621-TX, 020624-TX, 020626-TX, 020629-TX

DATE: SEPTEMBER 19, 2002

<u>DOCKET NO.</u>	<u>PROVIDER LAST REPORTED REVENUES & PERIOD COVERED</u>	<u>CERT. NO.</u>	<u>RAFs</u>	<u>P and I</u>
020600-TX	Ntegrity Telecontent Services Inc. \$0 Revenues for Period Ended 12/31/00	7640	2001	2001
020603-TX	Sigma Networks Telecommunications, Inc. No Previous Return Filed	7678	2001	2001
020621-TX	Telicor Inc. \$0 Revenues for Period Ended 12/31/00	7660	2001	2001
020624-TX	Broadband2Wireless US, Inc. No Previous Return Filed	7712	2001	2001
020626-TX	NxGen Networks, Inc. No Previous Return Filed	7779	2001	2001
020629-TX	Zephion Networks Communications, Inc. No Previous Return Filed	7789	2001	2001