



Public Service Commission

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COMMISSION
CLERK

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RECEIVED - PSC

DATE: OCTOBER 24, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji*
OFFICE OF THE GENERAL COUNSEL (DODSON) *JD*

RE: DOCKET NO. 020588-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALEC CERTIFICATE NO. 7478 ISSUED TO DV2, INC. FOR VIOLATION OF RULE 25-4.161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 11/05/02 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020588.RCM

CASE BACKGROUND

- **07/05/00** - This company obtained Florida Public Service Commission Alternative Local Exchange Carrier (ALEC) Certificate No. 7478.
- **12/12/01** - The Division of the Commission Clerk & Administrative Services mailed the 2001 Regulatory Assessment Fee (RAF) notice. The due date was January 30, 2002.
- **02/21/02** - The Office of the General Counsel mailed a delinquent notice via certified mail. The US Postal Service subsequently returned the receipt, which showed the delinquent notice was signed for and delivered to the company.
- **05/03/02** - Staff wrote the company and explained that the 2001 RAF, plus penalty and interest charges, had not been paid.

DOCUMENT NUMBER-DATE

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Staff advised that a docket would be established if payment was not received by May 24, 2002.

- **06/26/02** - Having received no response from the company, staff opened this docket to address the nonpayment of RAF.
- **07/17/02** - The Commission received the company's payment for the minimum 2001 RAF. The company did not pay the statutory penalty and interest charges. The company reported no revenues for the period ended December 31, 2001.
- **08/16/02** - Staff wrote the company and explained that the past due penalty and interest charges needed to be paid and the company needed to resolve this docket.
- **09/09/02** - The Commission received payment for the past due amount in full. In addition, the company proposed a settlement to resolve this docket.

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 DV2, Inc. to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, Rules Incorporated?

RECOMMENDATION: Yes. The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within fourteen (14) calendar days from the date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of the Commission Order, Certificate No. 7478 should be canceled administratively. If DV2, Inc.'s certificate is cancelled in accordance with the Commission's Order from this recommendation, DV2, Inc. should be required to immediately cease and desist providing alternative local exchange services in Florida. (Isler)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, Rules Incorporated, 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.

After this docket was opened, but prior to staff filing a recommendation, the Commission received the company's payment for the outstanding regulatory assessment fee, including statutory penalty and interest charges, and a letter from the company which offered to pay a \$100 contribution and proposed to pay future RAFs on a timely basis. In addition, the company's settlement proposal included a waiver of objection to the administrative cancellation of the company's certificate in the event the settlement proposal is accepted and the company ultimately fails to comply with the terms of its offer. The recommended settlement amount is consistent with amounts the Commission has accepted for recent, similar violations. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the

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obligation to pay Regulatory Assessment Fees, including statutory penalty and interest charges, if the certificate was active during any portion of the calendar year, including the year of cancellation.

Accordingly, staff believes the terms of the settlement agreement as summarized in this recommendation should be accepted. Any contribution should be received by the Commission within fourteen (14) calendar days from the date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of the Commission Order, Certificate No. 7478 should be canceled administratively. If DV2, Inc.'s certificate is cancelled in accordance with the Commission's Order from this recommendation, DV2, Inc. should be required to immediately cease and desist providing alternative local exchange services in Florida.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon receipt of the \$100 contribution or cancellation of the certificate. (Dodson)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon receipt of the \$100 contribution or cancellation of the certificate.