

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: NOVEMBER 20, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER)
OFFICE OF THE GENERAL COUNSEL (TEITZMAN, W. KNIGHT)

RE: DOCKET NO. 020568-TX - CANCELLATION BY FLORIDA PUBLIC
SERVICE COMMISSION OF ALEC CERTIFICATE NO. 5276 ISSUED TO
TOTALINK OF FLORIDA, LLC FOR VIOLATION OF RULE 25-4.0161,
F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS
COMPANIES.

DOCKET NO. 020601-TX - CANCELLATION BY FLORIDA PUBLIC
SERVICE COMMISSION OF ALEC CERTIFICATE NO. 7653 ISSUED TO
EUREKA TELECOM, L.L.C. FOR VIOLATION OF RULE 25-4.0161,
F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS
COMPANIES.

DOCKET NO. 020602-TX - CANCELLATION BY FLORIDA PUBLIC
SERVICE COMMISSION OF ALEC CERTIFICATE NO. 7668 ISSUED TO
EVOLUTION NETWORKS SOUTH, INC. FOR VIOLATION OF RULE 25-
4.0161, F.A.C., REGULATORY ASSESSMENT FEES;
TELECOMMUNICATIONS COMPANIES.

AGENDA: 12/02/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020568.RCM

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CASE BACKGROUND

The companies listed on Attachment A were mailed the 2001 Regulatory Assessment Fee (RAF) Notice and payment was due by January 30, 2002. On February 21, 2002, the Office of the General Counsel mailed a delinquent notice via certified mail for the 2001 RAF.

Before the dockets were opened, staff wrote each of the companies listed on Attachment A and explained that the 2001 RAF, plus penalty and interest charges, had not been paid. Staff advised that a docket would be established if payment was not received within 15 working days. No response was received, therefore, these dockets were established.

The companies listed on Attachment A subsequently paid the past due amount, including statutory penalty and interest charges, paid the 2002 RAF, and requested voluntary cancellation of their respective certificates.

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 the companies listed on Attachment A a voluntary cancellation of their respective certificates 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?

RECOMMENDATION: Yes. The Commission should grant each company a voluntary cancellation of its telecommunications certificate with an effective date as listed on Attachment A. If a company's certificate is cancelled in accordance with the Commission's Order from this recommendation, that company as listed on Attachment A should be required to immediately cease and desist providing alternative local exchange carrier services in Florida. (Isler; Teitzman; W. Knight)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, incorporated by Rule 25-24.835, 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.

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.

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The Division of the Commission Clerk & Administrative Services notified staff that the companies had not submitted the 2001 Regulatory Assessment Fees, along with statutory penalty and interest charges. Therefore, the companies had failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code.

After the dockets were established, the companies, as listed on Attachment A, paid the past due amount, paid the 2002 Regulatory Assessment Fee, and requested voluntary cancellation of their respective certificates in compliance with Rule 25-24.820(2)(a), (b), (c), and (d), Florida Administrative Code, since the companies listed on Attachment A no longer provide or had never begun providing alternative local exchange carrier services in Florida. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the 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 Commission should grant each company a voluntary cancellation of its telecommunications certificate with an effective date as listed on Attachment A. If a company's certificate is cancelled in accordance with the Commission's Order from this recommendation, that company as listed on Attachment A should be required to immediately cease and desist providing alternative local exchange carrier services in Florida.

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ISSUE 2: 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 cancellation of the certificates. A protest in one docket should not prevent the action in a separate docket from becoming final. (Teitzman; W. Knight)

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, these dockets should be closed upon issuance of a Consummating Order. A protest in one docket should not prevent the action in a separate docket from becoming final.

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<u>DOCKET NO.</u>	<u>PROVIDER LAST REPORTED REVENUES & PERIOD COVERED</u>	<u>CERT. NO.</u>	<u>Effective Date of Cancellation</u>
020568-TX	TOTALink of Florida, LLC \$0 Revenues for Period Ended 12/31/01 and 12/31/02	5276	07/31/02
020601-TX	Eureka Telecom, L.L.C. \$0 Revenues for Period Ended 12/31/01 and 12/31/02	7653	10/30/02
020602-TX	Evolution Networks South, Inc. \$0 Revenues for Period Ended 12/31/01 and 12/31/02	7668	10/23/02