



Public Service Commission

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DATE: DECEMBER 5, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Aji*
OFFICE OF THE GENERAL COUNSEL (TEITZMAN) *W/C*

RE: DOCKET NO. 021161-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALEC CERTIFICATE NO. 7970 ISSUED TO CALPOINT (FLORIDA), LLC FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 12/17/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\021161.RCM

CASE BACKGROUND

- 12/11/01 - This company obtained Florida Public Service Commission Alternative Local Exchange Carrier (ALEC) Certificate No. 7970.
- 08/27/02 - Staff mailed the 2001 Regulatory Assessment Fee (RAF) notice and requested payment by September 17, 2002.
- 10/22/02 - Staff called the company and left a voice mail message requesting a return call. Ms. Myra Hoffman returned staff's call by leaving a voice mail message.
- 10/23/02 - Ms. Hoffman called staff and requested that the 2001 RAF return form be faxed to her. This was done the same date. Staff included a note requesting payment by November

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FROM-COMMISSION CLERK

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15, 2002. When no payment or response had been received, this docket was established.

- **11/27/02** - As of this date, the Commission has not received payment for the 2001 RAF, including statutory penalty and interest charges.

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 penalty of \$500 or cancel Calpoint (Florida), LLC's certificate for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, with an effective date of December 31, 2002?

RECOMMENDATION: Yes. The Commission should assess a penalty of \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, incorporated by Rule 25-24.835, Florida Administrative Code, with an effective date of December 31, 2002, if the penalty and 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 of \$500 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 company does not protest the Commission's Order, or if the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, are not received in accordance with the Commission's Order, the company's certificate 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 the company's 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 carrier services in Florida. (Isler; Teitzman)

STAFF ANALYSIS: In reconciling active certificates with the certificate holders that had not paid the RAF, staff discovered that this company had not been mailed the 2001 Regulatory Assessment Fee return form since its certificate did not become effective until December 11, 2001. On August 27, 2002, staff mailed a letter, which explained that the 2001 RAF return form had inadvertently not been mailed and included a copy of the Order granting the company's certificate, which states that the RAF is due annually. Staff explained that Rule 25-4.0161(7)(d), Florida Administrative Code, provides that failure to receive a form shall not excuse a telecommunications company from its obligation to pay the fee timely. Staff included the 2001 RAF return form and

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requested payment by September 17, 2002. When payment had not been received, staff called the company. The company requested that staff fax the 2001 RAF return form, which was done on October 23, 2002. As of November 15, 2002, payment had not been received, therefore, this docket was established.

As of November 27, 2002, the company has not paid its 2001 Regulatory Assessment Fee, plus statutory penalty and interest charges. Therefore, it appears the company has 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, and has not requested cancellation of its certificate in compliance with Rule 25-24.820, Florida Administrative Code. The penalty amount recommended in this docket is consistent with amounts imposed for recent, similar violations. 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 recommends that the Commission should assess a penalty of \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, incorporated by Rule 25-24.835, Florida Administrative Code, effective December 31, 2002, if the penalty and 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 of \$500 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 company does not protest the Commission's Order, or if the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, are not received in accordance with the Commission's Order, the company's certificate 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 the company's 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 carrier 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 the issuance of the Proposed Agency Action Order. The docket should then be closed upon receipt of the fine 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 fine and fees or cancellation of the certificate.