



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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COMMISSION CLERK

**DATE:** DECEMBER 5, 2002

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

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

**RE:** DOCKET NO. 021075-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALEC CERTIFICATE NO. 7990 ISSUED TO CALVIN HARDGE D/B/A CAL-TEC COMMUNICATIONS FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES AND 25-24.835, F.A.C., RECORDS & REPORTS; RULES INCORPORATED.

**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\021075.RCM

### CASE BACKGROUND

- 12/28/01 - This company obtained Florida Public Service Commission Alternative Local Exchange Carrier Certificate No. 7990.
- 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 at the telephone number listed in the Master Commission Directory, but the number had been disconnected. Staff then called Directory Assistance and was advised there was no listing for the company name or Calvin Hardge.

DOCUMENT NUMBER-DATE

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FPSC COMMISSION CLERK

DOCKET NO. 021075-TX

DATE: DECEMBER 5, 2002

- **10/23/02** - 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, 364.337, and 364.183, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission impose a total penalty of \$1,000 (\$500 for each rule violation) or cancel Calvin Hardge d/b/a CAL-TEC Communications' certificate for apparent violation of Rules 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, and 25-24.835, Florida Administrative Code, Rules Incorporated, which incorporates 25-24.480, Florida Administrative Code, with an effective date of December 31, 2002?

**RECOMMENDATION:** Yes. The Commission should assess a total penalty of \$1,000 or cancel Calvin Hardge d/b/a CAL-TEC Communications' certificate for apparent violation of Rules 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, and 25-24.835, Florida Administrative Code, Rules Incorporated, which incorporates 25-24.480, Florida Administrative Code, with an effective date of December 31, 2002, if the penalty, Regulatory Assessment Fees, including statutory penalty and interest charges, and the information required by Rule 25-24.835, Florida Administrative Code, Rules Incorporated, which incorporates 25-24.480, Florida Administrative Code, are not received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. The total penalty of \$1,000 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, and required information are not received in accordance with the Commission's Order, Calvin Hardge d/b/a CAL-TEC Communications' 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 Calvin Hardge d/b/a CAL-TEC Communications' 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; Dodson)

**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 28, 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 requested payment by September 17, 2002.

In addition, staff attempted to call the company at the telephone number listed in the Master Commission Directory, but was unsuccessful. Staff also called Directory Assistance and was told there was no listing for the company nor Mr. Calvin Hardge. The company has not updated the information within 10 days of the change of its 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 as required by Rule 25-24.835, Florida Administrative Code, Rules Incorporated, which incorporates 25-24.480, Florida Administrative Code. Therefore, it appears Calvin Hardge d/b/a CAL-TEC Communications has failed to comply with Rules 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, and 25-24.835, Florida Administrative Code, Rules Incorporated, which incorporates 25-24.480, 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 assess a total penalty of \$1,000 or cancel Calvin Hardge d/b/a CAL-TEC Communications' certificate for apparent violation of Rules 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, and 25-24.835, Florida Administrative Code, Rules Incorporated, which incorporates 25-24.480, Florida

Administrative Code, with an effective date of December 31, 2002, if the penalty, Regulatory Assessment Fees, including statutory penalty and interest charges, and the information required by Rule 25-24.835, Florida Administrative Code, Rules Incorporated, which incorporates 25-24.480, Florida Administrative Code, are not received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. The total penalty of \$1,000 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, and required information are not received in accordance with the Commission's Order, Calvin Hardge d/b/a CAL-TEC Communications' 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 Calvin Hardge d/b/a CAL-TEC Communications' 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.

**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 and updated reporting requirements, or cancellation of the certificate. (Dodson)

**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 and updated reporting requirements, or cancellation of the certificate.