



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSIONER
CLERK

DATE: DECEMBER 5, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji* *WJ*
OFFICE OF THE GENERAL COUNSEL (ELLIOTT) *DFZ* *WJ*

RE: DOCKET NO. 020751-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF IXC CERTIFICATE NO. 7855 ISSUED TO TOTALCOM AMERICA CORPORATION FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

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

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020751.RCM

CASE BACKGROUND

- **07/30/01** - This company obtained Florida Public Service Commission Interexchange Carrier (IXC) Certificate No. 7855.
- **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.
- **05/23/02** - Staff wrote the company and explained that the 2001 RAF, plus penalty and interest charges, had not been paid.

DOCUMENT NUMBER-DATE

13309 DEC-58

FPSC-COMMISSION CLERK

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Staff advised that a docket would be established if payment was not received by June 13, 2002.

- **07/17/02** - Having received no response from the company, staff opened this docket to address the nonpayment of RAF.
- **10/21/02** - Order No. PSC-02-1443-PAA-TI was issued, which imposed a \$500 penalty.
- **10/28/02** - Mr. Marcus Bodet, attorney, called staff and asked that information be faxed to him to resolve this docket. The information, including the 2001 RAF return form, was faxed the same date.
- **11/12/02** - The Commission received the company's payment for the past due amount in full, including statutory penalty and interest charges. The company reported no revenues for the period ended December 31, 2001. In addition, the company proposed a settlement.

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 TotalCom America Corporation to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.480, Florida Administrative Code, Records & Reports; 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. 7855 should be cancelled administratively. If TotalCom America Corporation's certificate is cancelled in accordance with the Commission's Order from this recommendation, TotalCom America Corporation should be required to immediately cease and desist providing interexchange carrier services in Florida. (Isler; Elliott)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.480, Florida Administrative Code, Records & Reports; 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 Order No. PSC-02-1443-PAA-TI was issued on October 21, 2002, 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 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. 7855 should be cancelled administratively. If TotalCom America Corporation's certificate is cancelled in accordance with the Commission's Order from this recommendation, TotalCom America Corporation should be required to immediately cease and desist providing interexchange carrier 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. (Elliott)

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.