



Public Service Commission
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COMMISSION CLERK &

DATE: JANUARY 9, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji WD*
OFFICE OF THE GENERAL COUNSEL (DODSON) *MSD D/V*

RE: DOCKET NO. 020703-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF IXC CERTIFICATE NO. 7428 ISSUED TO FAIRPOINT COMMUNICATIONS SOLUTIONS CORP. FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 01/21/03 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020703.RCM

CASE BACKGROUND

- 05/30/00 - This company obtained Florida Public Service Commission Interexchange Carrier (IXC) Certificate No. 7428.
- 08/08/01 - Docket No. 011060-TI was established for nonpayment of the 2000 Regulatory Assessment Fee (RAF). On January 24, 2002, Order No. PSC-01-2259-AS-TI was reissued, which accepted the company's \$300 settlement. The Order was originally issued on November 19, 2001, but FairPoint Communications Solutions Corp. was not provided a copy of the Order. The omission was discovered on January 23, 2002, therefore, the Order was reissued to provide the company adequate notice to comply. The company subsequently paid the \$300 settlement and the docket was closed.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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- **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.
- **05/21/02** - Staff wrote the company 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 by June 11, 2002.
- **07/12/02** - Having received no response from the company, staff opened this docket to address the nonpayment of RAF.
- **10/31/02** - Order No. PSC-02-1487-PAA-TI was issued, which imposed a \$500 penalty.
- **11/20/02** - Mr. Martin P. McDonnell, attorney, responded to the Proposed Agency Action Order by proposing a settlement and advising that the 2001 RAF would be mailed by December 6, 2002.
- **12/09/02** - The Commission received the company's payment for the past due amount in full, including statutory penalty and interest charges. The company reported revenues in the amount of \$326,411 for the period ended December 31, 2001. In addition, the Commission received payment of the settlement proposal of \$500.

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 FairPoint Communications Solutions Corp. 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. 7428 should be cancelled administratively. If FairPoint Communications Solutions Corp.'s certificate is cancelled in accordance with the Commission's Order from this recommendation, FairPoint Communications Solutions Corp. should be required to immediately cease and desist providing interexchange carrier services in Florida. (Isler; Dodson)

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-02-1487-PAA-TI was issued on October 31, 2002, the Commission received a letter from the company which offered to pay a \$500 contribution and proposed to pay future RAFs on a timely basis. The company subsequently paid the outstanding Regulatory Assessment Fee, including statutory penalty and interest charges, and the \$500 contribution. The recommended settlement amount is consistent with amounts the Commission has accepted for recent, similar violations.

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This is the second docket opened against FairPoint Communications Solutions Corp. for nonpayment of the RAF. On November 19, 2001, Order No. PSC-01-2259-AS-TI was issued in Docket No. 011060-TI. The Order accepted the company's \$300 settlement proposal. On January 23, 2002, the Commission discovered that the company had not been provided a copy of the Order, therefore, Order No. PSC-01-2259-AS-TI was reissued on January 24, 2002, to allow the company adequate notice to comply with the Order. The company subsequently paid the \$300 settlement and the docket was then closed. 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. 7428 should be cancelled administratively. If FairPoint Communications Solutions Corp.'s certificate is cancelled in accordance with the Commission's Order from this recommendation, FairPoint Communications Solutions Corp. 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. (Dodson)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.