

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: APRIL 3, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Aji*
OFFICE OF THE GENERAL COUNSEL (DODSON) *JWD C.P.Y.*

RE: DOCKET NO. 021162-TI - CANCELLATION BY FLORIDA PUBLIC
SERVICE COMMISSION OF IXC CERTIFICATE NO. 7979 ISSUED TO
TALKNOW, INC. FOR VIOLATION OF RULE 25-4.0161, F.A.C.,
REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 04/15/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\021162.RCM

CASE BACKGROUND

- 12/11/01 - This company obtained Florida Public Service Commission Interexchange Carrier Certificate No. 7979.
- 08/27/02 - Staff mailed the 2001 Regulatory Assessment Fee (RAF) notice, along with a letter, and requested payment by September 17, 2002.
- 10/22/02 - Staff called the company and spoke with Ms. Desiree Neal, who stated she did not receive staff's letter dated August 27, 2002, and asked that it be faxed to her. The letter and the 2001 RAF notice were faxed the same date.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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- **10/23/02** - Staff received a voice mail message from the company advising that the company had been sold back to its original owner.
- **10/24/02** - Staff faxed the company a note, which advised that TalkNow, Inc. is responsible for the RAF and either needs to request cancellation of its certificate or request transfer of the certificate by completing an application. Staff requested a response by November 12, 2002.
- **11/15/02** - No response was received, therefore, this docket was established.
- **12/05/02** - Staff filed its recommendation to assess a \$500 penalty or cancel the company's certificate for nonpayment of the 2001 RAF.
- **12/13/02** - The Commission received payment of the company's 2001 RAF, including statutory penalty and interest charges, a statement that the 2002 RAF would be paid by the due date of January 30, 2003, along with a letter requesting cancellation of its certificate. The company reported no revenues for the period ended December 31, 2001.
- **12/17/02** - At the December 17, 2002, Agenda Conference, the Commission voted to assess a \$500 penalty or cancel the company's certificate.
- **01/03/03** - Staff wrote a memo to the Commissioners explaining that a Proposed Agency Action Order would not be issued since payment of the 2001 RAF and the request for cancellation of the company's certificate was received prior to the Commission vote.
- **02/04/03** - This docket was deferred from the February 4, 2003, Agenda Conference because the 2002 RAF had not been received by January 30, 2003.
- **03/18/03** - As of this date, there are no outstanding complaints against this company. In addition, the Commission received the company's payment for the 2002 RAF. The company reported no revenues for the period ended December 31, 2002.

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 TalkNow, Inc. a voluntary cancellation of Interexchange Carrier Certificate No. 7979 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?

RECOMMENDATION: Yes. The Commission should grant the company a voluntary cancellation of its certificate with an effective date of December 13, 2002. If the company's certificate is cancelled in accordance with the Commission's Order from this recommendation, TalkNow, Inc. 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, incorporated by Rule 25-24.480, 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 25-24.474(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:
 - (a) Statement of intent and date to pay Regulatory Assessment Fee.
 - (b) Statement of why the certificate is proposed to be cancelled.

- (c) A statement on treatment of customer deposits and final bills.
- (d) Proof of individual customer notice regarding discontinuance of service.

The Division of the Commission Clerk & Administrative Services notified staff that the company had not submitted the 2001 Regulatory Assessment Fees, along with statutory penalty and interest charges. Therefore, the company had failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.480, Florida Administrative Code.

Staff's recommendation to impose a \$500 penalty or cancel the company's certificate was approved by the Commission at the December 17, 2002, Agenda Conference. On December 13, 2002, the Commission had received the company's payment for the 2001 RAF, along with statutory penalty and interest charges, the company's statement that the 2002 RAF would be paid by the due date of January 30, 2003, and a request for cancellation of the company's certificate. Staff was not aware that the company had paid prior to the Commission's vote on December 17, 2002. Based on this information, staff initiated measures to stop issuance of the Proposed Agency Action Order. Staff filed its recommendation on January 23, 2003, to recommend approval of the company's request for a voluntary cancellation. However, the docket was deferred from the February 4, 2003, Agenda Conference because the company did not pay the 2002 RAF by January 30, 2003, as proposed in its settlement offer. The company subsequently paid the 2002 fee in full. TalkNow, Inc. has no customers and has now complied with Rule 25-24.474, Florida Administrative Code.

Accordingly, staff believes the Commission should grant the company a voluntary cancellation of its certificate with an effective date of December 13, 2002. If the company's certificate is cancelled in accordance with the Commission's Order from this recommendation, TalkNow, Inc. should be required to immediately cease and desist providing Interexchange 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 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 issuance of a Consummating Order.