

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: SEPTEMBER 25, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Dji*
OFFICE OF THE GENERAL COUNSEL (MCKAY) *VS¹⁴ Mckay*

RE: DOCKET NO. 030763-TI - CANCELLATION OF TARIFF AND REMOVAL FROM REGISTER BY FLORIDA PUBLIC SERVICE COMMISSION OF IXC REGISTRATION NO. TJ133 ISSUED TO COMMUNITEL, INC. FOR VIOLATION OF SECTION 364.336, FLORIDA STATUTES.

AGENDA: 10/07/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030763.RCM

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CASE BACKGROUND

- **09/15/98** - This company obtained Florida Public Service Commission Intrastate Interexchange Company (IXC) Registration No. TJ133.
- **12/12/02** - The Division of the Commission Clerk & Administrative Services mailed the 2002 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 30, 2003.
- **02/21/03** - The Office of the General Counsel mailed a delinquent notice for nonpayment of the 2002 RAF via certified mail. The US Postal Service returned the certified receipt, which showed the delinquent notice was signed for and delivered on February 24, 2003.

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FPSC-COMMISSION CLERK

- **03/19/03** - The Division of the Commission Clerk and Administrative Services notified staff that this company had not paid its 2002 RAF.
- **04/28/03** - Staff wrote the company and explained that payment for the RAF needed to be paid by May 19, 2003, to avoid an enforcement docket from being established.
- **07/10/03** - Staff faxed the company a note attempting collection of the 2002 RAF.
- **08/05/03** - The 2002 RAF return and payment was not received, therefore, staff established this docket.
- **08/12/03** - Ms. Elsa Pelaez-Lopez, CEO, called staff and asked staff to fax her the information needed to resolve this docket. The information was faxed the same date.
- **08/28/03** - The Commission received the company's 2002 RAF return and payment, the 2003 RAF payment, and a letter requesting termination of the company's IXC registration. The company reported no revenues for RAF years 2002 and 2003.
- **09/08/03** - There are no complaints logged against Communitel, Inc.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.02, and 364.285, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Communitel, Inc. a voluntary removal from the register of IXC Registration No. TJ133 and cancel its tariff?

RECOMMENDATION: The Commission should grant Communitel, Inc. a voluntary removal from the register of IXC Registration No. TJ133 and cancel its tariff with an effective date of August 28, 2003. If the tariff is cancelled and the company's name removed from the register in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing intrastate interexchange service in Florida. **(Isler; McKay)**

STAFF ANALYSIS: 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.

The Division of the Commission Clerk & Administrative Services notified staff that the company had not submitted the 2002 Regulatory Assessment Fees, along with statutory penalty and interest charges, for the year 2002. Therefore, it appeared the company had failed to comply with Section 364.336, Florida Statutes, and had not requested cancellation of its tariff or removal from the register in compliance with Section 364.02, Florida Statutes.

Staff wrote the company twice attempting collection of the RAFs prior to establishing a docket without success. On August 12, 2003, the company's CEO, Ms. Elsa Pelaez-Lopez called staff for information on resolving the docket. Ms. Pelaez-Lopez advised staff that Communitel, Inc. did not provide any telecommunications service to end users. Instead the company was a distributor of prepaid phone cards but that its name did not appear on the cards. On August 28, 2003, the Commission received the company's payment for the 2002 and 2003 RAF, along with statutory penalty and interest charges for 2002, and a letter requesting removal from the register of its IXC Registration No. TJ133.

Accordingly, staff believes the Commission should grant Communitel, Inc. a voluntary removal from the register of IXC

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Registration No. TJ133 and cancel its tariff with an effective date of August 28, 2003. If the tariff is cancelled and the company's name removed from the register in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing intrastate interexchange service 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 issuance of the Proposed Agency Action Order. The docket should then be closed upon issuance of a Consummating Order. **(McKay)**

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.