

State of Florida



Public Service Commission

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

OCT 22 AM 9:36

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

DATE: OCTOBER 22, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji*
OFFICE OF THE GENERAL COUNSEL (MCKAY) *VGM JK*

RE: DOCKET NO. 030614-TA - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF AAV CERTIFICATE NO. 4025 ISSUED TO WINSTAR COMMUNICATIONS, LLC FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 11/03/03 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030614.RCM

CASE BACKGROUND

- 05/21/02 - This company obtained Florida Public Service Commission Alternative Access Vendor (AAV) Certificate No. 4025.
- 12/12/02 - The Division of the Commission Clerk & Administrative Services mailed the 2002 Regulatory Assessment Fee (RAF) notice. The due date was January 30, 2003.
- 02/21/03 - The Office of the General Counsel mailed a delinquent notice via certified mail. The US Postal Service subsequently returned the certified receipt showing the delinquent notice was signed for and delivered on February 25, 2003.

DOCUMENT NUMBER DATE

10359 OCT 22 8

FPSC-COMMISSION CLERK

DOCKET NO. 030614-TA
DATE: OCTOBER 22, 2003

- **03/19/03** - The Division of the Commission Clerk & Administrative Services notified staff that this company had not paid its 2002 RAF.
- **04/11/03** - Staff wrote the company and explained that the 2002 RAF had not been paid and that in order to avoid an enforcement docket from being established, the RAF needed to be paid by April 30, 2003.
- **06/18/03** - Staff faxed the company a note attempting collection prior to establishing a docket.
- **07/15/03** - Docket No. 030614-TA was established for nonpayment of the 2002 RAF.
- **08/15/03** - The Commission received the company's payment for the 2002 RAF, including the majority of the statutory penalty and interest charges. The company reported revenues in the amount of \$1,213,976 for the period ended December 31, 2002.
- **09/10/03** - The Commission received the company's payment for the balance of the statutory penalty and interest charges.
- **09/16/03** - The Commission received the company's proposed 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 Winstar Communications, LLC to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, which implements Section 364.336, Florida Statutes?

RECOMMENDATION: 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 Florida Department of Financial Services 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. 4025 should be canceled administratively. If Winstar Communications, LLC's certificate is cancelled in accordance with the Commission's Order from this recommendation, Winstar Communications, LLC should be required to immediately cease and desist providing alternative access vendor services in Florida. **(Isler; McKay)**

STAFF ANALYSIS: Rule 25-4.0161, 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.

After this docket was opened, but prior to staff filing a recommendation, the Commission received the company's payment for the outstanding RAFs, 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.

Accordingly, staff believes the terms of the settlement agreement as summarized in this recommendation should be accepted.

DOCKET NO. 030614-TA
DATE: OCTOBER 22, 2003

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 Florida Department of Financial Services 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. 4025 should be canceled administratively. If Winstar Communications, LLC's certificate is cancelled in accordance with the Commission's Order from this recommendation, Winstar Communications, LLC should be required to immediately cease and desist providing alternative access vendor 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. **(McKay)**

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.