



Public Service Commission

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

JAN 22 AM 11:13

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

COMMISSION
CLERK

DATE: JANUARY 22, 2004

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *PJC*
OFFICE OF THE GENERAL COUNSEL (MCKAY) *vsm*

RE: DOCKET NO. 031013-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF CLEC CERTIFICATE NO. 7737 ISSUED TO KERNAN ASSOCIATES, LTD. D/B/A ST. JOHNS ESTATES, FOR VIOLATION OF RULE 25-24.0161, F.A.C, REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 02/03/04 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\031013.RCM

CASE BACKGROUND

- **03/05/01** - This company obtained Florida Public Service Commission Competitive Local Exchange Telecommunications Company Certificate No. 7737.
- **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 sent a delinquent notice via certified mail. The US Postal Service returned the certified receipt, which showed the delinquent notice was signed for and delivered.

DOCUMENT NUMBER-DATE

00968 JAN 22 04

FPSO-COMMISSION CLERK

- **03/19/03** - The Division of the Commission Clerk & Administrative Services notified staff that this company had not paid the 2002 RAF.
- **04/11/03** - Staff wrote the company and explained that payment for the RAF needed to be paid by April 30, 2003, to avoid an enforcement docket from being established.
- **06/25/03** - Staff faxed the company a note attempting collection of the 2002 RAF a final time before establishing a docket. On the same date, staff received a return fax from the company stating that the RAF would be paid.
- **10/28/03** - The Commission did not receive payment; therefore, this docket was established.
- **12/05/03** - Staff wrote the company and explained that payment had not been received and asked if it wished to keep its certificate active or wanted to cancel its certificate.
- **12/15/03** - The Commission received a check for the \$50 minimum RAF. The company did not send the 2002 RAF return.
- **12/23/03** - Staff wrote the company and advised it to pay the statutory late payment charges, complete the 2002 RAF return, and either propose a settlement or request cancellation of its certificate.
- **01/02/04** - The Commission received the company's completed 2002 RAF return and check for the late payment charges and additional RAF. The company reported revenues in the amount of \$47,383 for the period ended December 31, 2002. In addition, the company proposed a settlement.
- **01/16/04** - The Commission received the company's 2003 RAF return and payment. The company reported revenues in the amount of \$26,591 for the period ended December 31, 2003.

In Issue 1 of this recommendation, staff identifies Rule 25-4.0161, Florida Administrative Code, as that apparently violated by the company. The rule is incorporated by Rule 25-24.835, Florida Administrative Code. To avoid redundancy, hereafter, the recommendation refers only to Rule 25-4.0161, Florida Administrative Code.

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 Kernan Associates, Ltd. d/b/a St. Johns Estates to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within 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. 7737 should be cancelled administratively. If Kernan Associates, Ltd. d/b/a St. Johns Estates' certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing competitive local exchange telecommunications 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 late payment charges 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 Regulatory Assessment Fee, including statutory late

payment charges, and a letter from the company which offered to pay a \$100 contribution and proposed to pay future RAFs on a timely basis. The recommended settlement amount in this docket 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. Any contribution should be received by the Commission within 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. 7737 should be cancelled administratively. If Kernan Associates, Ltd. d/b/a St. Johns Estates' certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing competitive local exchange telecommunications 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.