

State of Florida



Public Service Commission

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

DATE: FEBRUARY 5, 2004

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *PJC*
OFFICE OF THE GENERAL COUNSEL (ROJAS) *JK* *hr*

RE: DOCKET NO. 030760-TI - CANCELLATION OF TARIFF AND REMOVAL FROM REGISTER BY FLORIDA PUBLIC SERVICE COMMISSION OF IXC REGISTRATION NO. TJ008 ISSUED TO EXECUTIVE BUSINESS CENTERS, INC. FOR VIOLATION OF SECTION 364.336, FLORIDA STATUTES.

AGENDA: 02/17/04 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030760.RCM

CASE BACKGROUND

- **01/01/98** - This company obtained Florida Public Service Commission Interexchange Telecommunications Registration No. TJ008.
- **08/31/00** - In a separate proceeding, Docket No. 001283-TI was established for nonpayment of the 1999 Regulatory Assessment Fee (RAF). The company paid the past due fee, including statutory late payment charges and proposed a settlement. On January 30, 2001, Order No. PSC-01-0261-AS-TI was issued, which accepted the company's \$100 settlement offer. In addition, the company proposed to pay future RAFs on a timely basis. The company paid the \$100 contribution and the docket was closed.

DOCUMENT NUMBER DATE
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- **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 sent a delinquent notice via certified mail attempting collection of the 2002 RAF. The US Postal Service returned the unopened delinquent notice but did not provide a reason for the return.
- **03/19/03** - The Division of the Commission Clerk & Administrative Services notified staff that this company had not paid the 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 requesting that payment for the 2002 RAF, including statutory late payment charges for the years 2000 and 2002, be made.
- **08/05/03** - Payment was not received; therefore, this docket was established.
- **08/12/03** - A representative from the company called staff and advised the company wished to keep its certificate active and asked that any information required to resolve this docket be faxed to the company, which was faxed the same date. In addition, the company provided the Commission with its updated reporting requirements.
- **11/20/03** - Staff wrote the company and advised it to complete the 2002 RAF return, pay the 2002 RAF, including statutory late payment charges for the years 2000 and 2002, and to propose a settlement or request cancellation of its certificate to resolve this docket.
- **12/04/03** - A representative from the company called staff and advised that the employee staff spoke with in August is no longer with the company and asked that any information necessary to resolve the docket be refaxed. The information was faxed on December 5, 2003.

- **12/16/03** - The Commission received the company's payment for the 2002 RAF, along with statutory late payment charges for the years 2000 and 2002. The company reported revenues in the amount of \$49,376 for the period ended December 31, 2002. In addition, the company proposed a settlement.
- **12/22/03** - Staff faxed the company a note and explained that staff could not recommend acceptance of its settlement because it was not consistent with prior Commission decisions and asked that the settlement be amended.
- **01/12/04** - The Commission received the company's payment for the 2003 RAF. The company reported revenues in the amount of \$36,102 for the period ended December 31, 2003. In addition, the Commission received the company's amended settlement proposal.

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

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Executive Business Centers, Inc. to resolve the apparent violation of 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, the company's tariff should be cancelled and its name removed from the register administratively. In addition, the company should be required to immediately cease and

desist providing intrastate interexchange services in Florida. If the company's tariff is cancelled and its name removed from the register, and subsequently decides to reapply for registration as an intrastate interexchange telecommunications company, the company should be required to first pay any outstanding RAF, including statutory late payment charges, and the contribution. **(Isler; Rojas)**

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 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 \$500 contribution and proposed to pay future RAFs on a timely basis. In addition, the company has paid the 2003 RAFs. The recommended settlement amount in this docket is consistent with amounts the Commission has accepted for recent, similar violations.

This is the second docket established for the same rule violation. In the prior docket, No. 001283-TI, the Commission issued Order No. PSC-01-0261-AS-TI on January 30, 2001, which accepted the company's \$100 settlement. The company paid the \$100 contribution and the docket was closed.

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 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, the company's tariff should be cancelled and its name removed from the register administratively. In addition, the company should be required to immediately cease and desist providing intrastate interexchange services in Florida. If the company's tariff is cancelled and its name removed from the register, and subsequently decides to reapply for registration as

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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 \$500 contribution or cancellation of the tariff and removal from the register. **(Rojas)**

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon receipt of the \$500 contribution or cancellation of the tariff and removal from the register.