

VOTE SHEET

FEBRUARY 17, 2004

RE: Docket No. 040016-TI - Compliance investigation of ESS.COM, L.L.C. for apparent violation of Section 364.02, F.S., Definitions.

ISSUE 1: Should the Commission impose a penalty upon ESS.COM of \$10,000 per apparent violation, for a total of \$20,000, for the two apparent violations of Section 364.02, Florida Statutes, Definitions, to be paid to the Florida Public Service Commission within fourteen calendar days after the issuance of the Consummating Order?

RECOMMENDATION: Yes. The Commission should impose a penalty upon ESS.COM of \$10,000 per apparent violation, for a total of \$20,000, for the two apparent violations of Section 364.02, Florida Statutes, Definitions. If ESS.COM fails to timely protest the Commission's Order, and fails to pay the \$20,000 penalty within fourteen calendar days after the issuance of the Consummating Order, the company's tariff should be cancelled and Registration No. TJ410 should be removed from the register. The company should also be required to immediately cease and desist providing intrastate interexchange telecommunications service in Florida upon issuance of the Consummating Order.

APPROVED

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- SEC \_\_\_\_\_
- OTH \_\_\_\_\_

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

*Charles W. Jaber*  
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*John J. Jaber*  
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*Maureen M. Jaber*  
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*John J. Jaber*  
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*Trudy Bradley*  
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REMARKS/DISSENTING COMMENTS:

Commissioner Jaber participated in the conference by telephone. She agreed with/dissented from the majority vote and will sign the vote sheet upon return to the office.

DOCUMENT NUMBER-DATE

02304 FEB 18 04

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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. If the Commission's Order is not protested, this docket should be closed upon receipt of the payment of the penalty or the cancellation of the company's tariff and the removal of Registration No. TJ410 from the register.

**APPROVED**