

State of Florida



Public Service Commission

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DATE: March 4, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (M. Watts) *MA*
Office of the General Counsel (Rojas) *GR BK* *DM*

RE: Docket No. 030995-TI – Compliance investigation of Cybertel, Communications Corp. for apparent violations of Sections 364.02(13), 364.04, and 364.336, Florida Statutes.

AGENDA: 03/16/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030995.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission accept Cybertel, Communications Corp.'s (Cybertel's) settlement offer to pay all outstanding Regulatory Assessment Fees (RAFs), including any statutory penalty and interest charges, resolve any outstanding consumer complaints, voluntarily contribute \$5,000 to the General Revenue Fund, pay the \$500 penalty imposed in PAA Order No. PSC-02-1443-PAA-TI, sell its Florida customer base to ComTech21, LLC, and discontinue providing intrastate interexchange telecommunications services in Florida effective February 12, 2004, to resolve the apparent violations of Sections 364.02(13), 364.04, and 364.336, Florida Statutes?

Recommendation: Yes. (M. Watts/Rojas)

Staff Analysis: Section 364.336, Florida Statutes, requires the payment of Regulatory Assessment Fees (RAFs) by January 30 of the subsequent year for telecommunications

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companies, and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Because Cybertel did not pay its 2001 RAF, staff opened Docket No. 020716-TI, Cancellation by Florida Public Service Commission of IXC Certificate No. 7554 issued to Cybertel, Communications Corp. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. On October 21, 2002, the Commission issued Proposed Agency Action (PAA) Order No. PSC-02-1443-PAA-TI, which imposed a \$500 penalty or canceled Cybertel's IXC certificate. Cybertel failed to respond to the PAA Order; thus on November 18, 2002, the Commission issued Consummating Order (CO) No. PSC-02-1596-CO-TI, which made the PAA Order final, and canceled Cybertel's IXC certificate.

On June 24, 2003, the Commission received a consumer complaint, Request No. 540430T, regarding improper billing. The complainant claimed that he was receiving monthly bills from two long distance providers for the same calls. The complainant reported that his preferred carrier was Cybertel. While investigating this complaint, staff discovered in September 2003 that Cybertel continued to provide intrastate interexchange telecommunications services in Florida even though its certificate was canceled by the Commission in 2002.

Section 364.02(13), Florida Statutes, requires each IXC to provide the Commission with information to contact and communicate with the company. Section 364.02(13), Florida Statutes, states in pertinent part:

Each intrastate interexchange telecommunications company shall continue to be subject to ss. 364.04, 364.10(3)(a), and (d), 364.285, 364.163, 364.501, 364.603, and 364.604, shall provide the commission with such current information as the commission deems necessary to contact and communicate with the company....

Section 364.04(1), Florida Statutes, states:

Upon order of the commission, every telecommunications company shall file with the commission, and shall print and keep open to public inspection, schedules showing the rates, tolls, rentals, contracts, and charges that a company for service to be performed within the state.

Staff contacted Mr. Richard Schmidt, of Cybertel, who stated that he was unaware of Cybertel's certificate cancellation and he confirmed that Cybertel had not ceased providing telecommunications services in Florida. On September 18, 2003, staff mailed Cybertel a certified letter outlining the steps the company needed to take to correct this situation. Staff requested the company to pay its past due RAFs, with statutory penalty and interest, as well as the \$500 fine assessed in Docket No. 020716-TI, and file its registration and tariff with the Commission by September 30, 2003.

Cybertel did not respond to staff's letter or take any of the steps requested by staff. On October 21, 2003, staff opened this docket to investigate whether the Commission should impose a penalty on the company for violating Commission rules, statutes and Orders.

In December 2003, Cybertel contacted staff to initiate a settlement in this docket. After several discussions from December 2003 to February 2004, Cybertel submitted its written offer of settlement on February 9, 2004, with an addendum filed February 12, 2004, and proposed the following:

- To pay penalty and interest owed for late payment of its 2000 RAFs (paid December 23, 2003);
- to pay its 2001 RAFs plus penalty and interest (paid December 23, 2003);
- to pay its 2002 RAFs plus penalty and interest (paid December 23, 2003);
- to pay its 2003 RAFs plus penalty and interest (in process);
- to pay its 2004 RAFs (in process);
- to pay the \$500 penalty imposed in Docket No. 020716-TI (paid December 29, 2003);
- to pay a voluntary contribution of \$5,000 to settle its apparent violation of Sections 364.02(13), 364.04, and 364.336, Florida Statutes (paid December 29, 2003);
- to sell its customer base to an IXC registered with the Florida Commission and provide a copy of its customer notification letter (transaction completed February 12, 2004); and
- to resolve any outstanding issues regarding complaints filed with the Commission.

Staff provided Cybertel the 2003 and 2004 RAF forms which the company is processing. The Commission has also received notice from COMTECH 21, LLC on December 23, 2003, regarding its purchase of Cybertel's customer base, along with a sample copy of the customer notification letter.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.02(13), 364.04, 364.285 and 364.336, Florida Statutes. The monies offered by Cybertel are consistent with the amounts the Commission has accepted as settlements in previous dockets for the same types of apparent statute violations. In addition, staff notes that Cybertel has no outstanding issues regarding consumer complaints.

Docket No. 030995-TI
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Issue 2: Should this docket be closed?

Recommendation: If no person, whose substantial interests are affected by the proposed actions files a protest of the Commission's decision on Issue 1 within the 21 day protest period, the Commission's Order will become final upon issuance of a Consummating Order. If the Commission's Order is not protested and Cybertel complies with its settlement offer, this docket should be closed administratively. If Cybertel fails to pay the Regulatory Assessment Fees owed, with penalty and interest, within 30 days of the issuance of the Consummating Order, this docket should remain open pending further proceedings. **(Rojas)**

Staff Analysis: If no person, whose substantial interests are affected by the proposed actions files a protest of the Commission's decision on Issue 1 within the 21 day protest period, the Commission's Order will become final upon issuance of a Consummating Order. If the Commission's Order is not protested and Cybertel complies with its settlement offer, this docket should be closed administratively. If Cybertel fails to pay the Regulatory Assessment Fees owed, with penalty and interest, within 30 days of the issuance of the Consummating Order, this docket should remain open pending further proceedings.