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Public Service Commission

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COMMISSION
CLERK

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

DATE: April 7, 2005

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

FROM: Division of Competitive Markets & Enforcement (Curry) *KLC*
Office of the General Counsel (Rojas) *R/R*

RE: Docket No. 041315-TI – Compliance investigation of D.G.A. Telecom, Inc. for apparent violation of Sections 364.02 and 364.04, F.S.

AGENDA: 04/19/05 – Regular Agenda –Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\041315.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission vacate Order PSC-05-0151-PAA-TI in regard to the compliance investigation of D.G.A. Telecom, Inc. for apparent violation of Sections 364.02 and 364.04, Florida Statutes?

Recommendation: Yes. (Curry, Rojas)

Staff Analysis: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a penalty or cancel a certificate if a company refuses to comply with the Commission rules or any provision of Chapter 364, Florida Statutes. 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), 364.163, 364.285, 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....

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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 of that company for service to be performed within the state.

On September 8, 2004, staff determined that D.G.A. Telecom, Inc. (DGA) was providing intrastate interexchange telecommunications services in Florida through the provisioning of prepaid calling card services and had not provided the Commission with the company's current contact information or filed a tariff with the Commission. On September 13, 2004, staff sent a letter to DGA requesting that it provide the Commission with the company's current contact information and file a tariff. On September 24, 2004, the Commission received the company's contact information and tariff; however, the staff that was involved with the compliance activities was unaware of the filing. Staff handling the certification activities processed the filing.

Staff continued the compliance action and DGA, at no point during the process, responded directly to the staff processing the compliance action. Thus, staff mistakenly opened Docket No. 041315-TI, and did not learn of this error until DGA contacted staff after Order No. PSC-05-0151-PAA-TI, was issued. Staff has since taken measures to preclude future occurrences of this error.

DGA was operating in noncompliance with Sections 364.02 and 364.04, Florida Statutes; however, upon being contacted by staff the company did make the appropriate filings. Historically, once the company complies after being notified by staff, no PSC action is taken against the company. Therefore, staff believes that the Commission should vacate Order No. PSC-05-0151-PAA-TI, as it pertains to this docket. In addition, the penalty should not be forwarded to the Department of Financial Services for further collection efforts.

Docket No. 041315-TI

Date: April 7, 2005

Issue 2: Should this docket be closed?

Recommendation: Yes. **(Rojas)**

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed as there are no other issues that need to be addressed by the Commission.