

State of Florida



Public Service Commission

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

DATE: August 18, 2005

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

FROM: Division of Competitive Markets & Enforcement (Curry) *KLC*
Division of Regulatory Compliance & Consumer Assistance (Stokes) *KS*
Office of the General Counsel (Scott) *KS* *AS* *SBK*

RE: Docket No. 050379-TP – Compliance investigation of T-NETIX Telecommunications Services, Inc., PATS Certificate No. 5102, T-NETIX Telecommunications Services, Inc., IXC Registration No. TJ804, and T-Netix, Inc., IXC Registration No. TI158, for apparent violation of Rule 25-22.032(6)(b), F.A.C., Customer Complaints, Section 364.02, F.S., Definitions, and Section 364.604, F.S., Billing Practices.

AGENDA: 08/30/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050379.RCM.DOC

Case Background

- July 23, 2003 through December 5, 2003 – T-Netix Telecommunications Services, Inc., Certificate No. 5102, T-Netix Telecommunications Services, Inc., Registration No. TJ804, and T-Netix, Inc., Registration No. TI158, (collectively referred to from here on as T-Netix), failed to respond to eight customer complaints. Staff made numerous attempts to obtain responses to the complaints, but the company did not respond.

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- January 14, 2004 through March 1, 2004 - After not receiving responses to the customer complaints, the Office of the General Counsel and technical staff contacted the company and obtained responses to the customer complaints. The company also advised staff that it had implemented procedures to ensure that all future Commission complaint inquiries would be answered in the most expeditious manner. Staff also informed T-Netix that it may be subject to penalties if it failed to respond to customer complaints in the future.
- January 18, 2005 through March 28, 2005 – The Commission received thirteen customer complaints regarding improper billing against T-Netix. Of the thirteen complaints that were filed against the company, staff determined that T-Netix failed to provide timely responses to ten of those complaints.
- May 27, 2005 – Staff opened this docket to address T-Netix’s apparent violation of Rule 25-22.032(6)(b), F.A.C., Customer Complaints, Section 364.02, F.S., Definitions, and Section 364.604, F.S., Billing Practices.
- July 11, 2005 through August 3, 2005 - Staff contacted T-Netix to discuss a settlement in this docket. T-Netix submitted a settlement offer (Attachment A) which is the subject of this recommendation.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.02, 364.285, and 364.604, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission accept T-Netix's proposed settlement offer of \$15,000 to resolve the apparent violations of Rule 25-22.032(6)(b), Florida Administrative Code, Customer Complaints, Section 364.02, Florida Statutes, Definitions, and Section 364.604, Florida Statutes, Billing Practices?

Recommendation: Yes. (Curry, Stokes, Scott)

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's rules. According to Rule 25-22.032(6)(b), Florida Administrative Code, Customer Complaints, a company shall provide staff with a written response to a customer complaint within 15 working days after staff sends the complaint to 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), 364.163, 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....

Section 364.604(2), Florida Statutes states:

A customer shall not be liable for any charges for telecommunications or information services that the customer did not order or that were not provided to the customer.

T-Netix has failed to timely respond to staff regarding ten customer complaints. After making several unsuccessful attempts to obtain responses to the ten complaints, this docket was established to address the company's apparent violations of the Commission's rules and the Florida Statutes. As outlined in the case background, T-Netix has in the past failed to timely respond to staff's complaint inquiries. According to T-Netix's March 1, 2004 response to staff, the company implemented procedures to ensure that all of staff's future compliant inquiries would be answered in the most expeditious manner. However, despite the implementation of the company's corrective procedures and staff's warning of the potential consequences of failing to timely respond to customer complaints, T-Netix has again failed to timely respond to staff's complaint inquiries.

After this docket was established, T-Netix provided staff with responses to the customer complaints. However, the responses were not submitted to the Commission within fifteen working days as required by Rule 25-22.032(6)(b), Florida Administrative Code. According to T-Netix's responses to the complaints, the company issued credits to the customers for the calls in question. However, several of the customers later informed staff that they did not receive a credit to their account as indicated in T-Netix's responses.

Staff later contacted the company, via telephone, to discuss the apparent violations addressed in this docket. In an effort to resolve T-Netix's apparent violations, the company has proposed to make a voluntary contribution of \$15,000 to the Commission to be deposited into the General Revenue Fund. This reflects a contribution of \$1,500 for each of the ten customer complaints. T-Netix has also provided staff with written verification that each of the ten customer complaints have been resolved and that each of the customers have been issued the appropriate credit to their accounts.

Prior to submitting its settlement offer, T-Netix informed staff that it has adopted and implemented a number of improvements in the way the company processes its customer complaints. Some of the changes include new supervision to oversee the processing of customer complaints and the implementation of new billing system enhancements. According to T-Netix, the company's customer complaints will be under the supervision of more experienced individuals who are more familiar with the Commission's requirements regarding customer complaints.

The monetary amount of T-Netix's proposed settlement offer is consistent with settlement offers that the Commission has previously accepted for similar violations. Further, the company has resolved the ten customer complaints that initiated the establishment of this docket and has adopted and implemented preventative measures that should result in more timely responses to future complaints. Therefore, staff recommends that the Commission accept T-Netix's proposed settlement offer of \$15,000 to resolve the apparent violations of Rule 25-22.032(6)(b), Florida Administrative Code, Customer Complaints, Section 364.02, Florida Statutes, Definitions, and Section 364.604, Florida Statutes, Billing Practices.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. T-Netix's \$15,000 voluntary contribution should be received by the Commission no later than October 27, 2005. The payment should be made payable to the Florida Public Service Commission and should identify the docket number and the company's name. Upon receipt of the payment, the Commission shall forward the contribution to the Division of Financial Services to be deposited into the General Revenue Fund. If T-Netix fails to submit the contribution by October 27, 2005, the company's Certificate No. 5102 and tariffs should be cancelled and Registration Nos. TI158 and TJ804 should be removed from the register. If the company's certificate and tariffs are cancelled and its registration numbers are removed from the register in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing telecommunications services in Florida. This docket should be closed administratively upon either receipt of the \$15,000 voluntary contribution or upon the cancellation of the company's certificate and tariffs and the removal of the company's registration numbers from the register. **(Scott)**

Staff Analysis: Staff recommends that the Commission take action as set forth in the above staff recommendation.

Offer of Settlement

Docket No. 050379-TP

This Offer of Settlement (the "Settlement") is submitted this 3rd day of August 2005 by T-Netix Telecommunications Services, Inc. and T-Netix, Inc., (collectively, the "Company") to the Florida Public Service Commission (the "Commission").

WHEREAS, pursuant to a Request To Establish Docket, dated May 27, 2005, from the Division of Competitive Markets & Enforcement, the Commission opened Docket No. 050379-TP;

WHEREAS, thereafter, the Company's representatives and the Staff engaged in discussions and exchanged certain information relevant to the apparent violations and proposed penalty; and

WHEREAS, based on those discussions the Company is prepared to make the following Offer of Settlement.

NOW THEREFORE, the Company hereby agrees as follows:

This Settlement is in consideration for the termination of Docket No. 050379-TP and upon approval by the Commission shall be incorporated by reference into a Proposed Agency Action Order of the Commission disposing of Docket No. 050379-TP.

This Settlement is for settlement purposes only and its execution by the Company does not constitute an admission by the Company, or its principals, of any violation of law, rules or policy associated with or arising from its

actions or omissions as described in the Staff recommendation that was the basis for the opening of Docket No. 050379-TP.

The Commission will not use the facts developed as part of Docket No. 050379-TP, or the existence of this Settlement, to institute, on its own motion, any new proceedings, formal or informal, or take any actions against the Company. Consistent with the foregoing, nothing in this Settlement limits, *inter alia*, the Commission's authority to consider and adjudicate any complaints that may be filed by third parties pursuant to the F.A.C., as amended, or to take any action in response to such complaints.

For purposes of settling the matters set forth herein, the Company agrees to make a voluntary contribution to the Florida General Revenue Fund in the amount of \$15,000. Upon the Commission's approval of this Settlement, the Company shall make the payment of this voluntary contribution in accordance with written instructions provided by Staff or included in any Commission order approving this Settlement.

This Settlement shall satisfy and resolve all issues against the Company that have been raised in Docket No. 050379-TP.

The Company's decision to enter into this Settlement is expressly contingent upon this Settlement being approved by the Commission without revision, change, addition, or modification.

The Company may withdraw from this Settlement if any revision, change, addition, or modification is made to its terms.

The Effective Date of this Settlement shall be the date that the Commission issues a Consummating Order approving the Settlement by making the Proposed Agency Action Order effective and final. This Settlement shall be attached to and incorporated by reference in any such Commission order.

In the event this Settlement is not accepted by the Commission or is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

The Parties agree that if any provision of the Settlement conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation, (except an order specifically intended to revise the terms of this Settlement to which the Company and its principals do not consent) that provision will be superseded by such Commission rule or order.

By this Settlement, the Company does not waive or alter its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of the Company's compliance efforts under

the Settlement, which would otherwise be privileged or confidential, are not altered by the execution or implementation of its terms and no waiver of such privileges is made by this Settlement.

The Company will take such other actions as may be reasonably necessary to effectuate the objectives of this settlement.

For T-Netix Telecommunications Services, Inc.
and T-Netix, Inc.

Dennis J. Reinhold

Vice President - General Counsel

August 3, 2005