

State of Florida



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09 FEB 19 **Public Service Commission**

COMMISSION CLERK

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 19, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Isler) *Isler*
Office of the General Counsel (Brooks) *Brooks*

RE: Docket No. 090015-TS – Request for cancellation of STS Certificate No. 8634 by Digital Community Networks, Inc., effective December 31, 2008.

AGENDA: 03/03/09 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCP\WP\090015.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny Digital Community Networks, Inc., a voluntary cancellation of its shared tenant service (STS) Certificate No. 8634 and cancel the certificate on the Commission’s own motion with an effective date of December 31, 2008?

Recommendation: Yes, the company should be denied a voluntary cancellation as listed on Attachment A. (Isler, Brooks)

Staff Analysis: See attached proposed Order.

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Issue 2: Should this docket be closed?

Recommendation: Staff recommends that 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. If the company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If the company pays the Regulatory Assessment Fee, including any applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's STS certificate will be voluntary. If the company fails to pay the Regulatory Assessment Fee, including any applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, then the company's STS certificate should be cancelled administratively, and the collection of the unpaid Regulatory Assessment Fee should be referred to the Florida Department of Financial Services for further collection efforts. If the company's STS certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing telecommunications service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fee, including any applicable late payment charges, or upon cancellation of the company's STS certificate. (Brooks)

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

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for cancellation of STS
Certificate No. 8634 by Digital Community
Networks, Inc., effective December 31, 2008.

DOCKET NO. 090015-TS
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER
CANCELLING SHARED TENANT SERVICE CERTIFICATE ON THE
COMMISSION'S OWN MOTION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Digital Community Networks, Inc. currently holds Certificate No. 8634, issued by this Commission on June 30, 2006, authorizing the provision of shared tenant service. Pursuant to Section 364.336, Florida Statutes, shared tenant service companies (STSS) must pay a minimum annual Regulatory Assessment Fee if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due. In addition, Rule 25-24.572, Florida Administrative Code, provides that a shared tenant service company requesting cancellation of its certificate must state its intent and date to pay the current Regulatory Assessment Fee (RAF).

On January 6, 2009, this Commission received the company's 2008 RAF return form with the note "company not in business any longer" written on it. Payment of the 2008 minimum RAF was not included. On January 6, 2009, our staff e-mailed the company's

president, Mr. Robert Miscavage, and explained that before going forward with a voluntary cancellation, the 2008 RAF needed to be paid. Payment has not been received.

For the reasons described above, we deny Digital Community Networks, Inc.'s request for voluntary cancellation of its STS certificate. However, we find it appropriate to involuntarily cancel the shared tenant service certificate, effective December 31, 2008, on this Commission's own motion for failure to comply with Rule 25-24.572, Florida Administrative Code, and pursuant to Section 364.336, Florida Statutes.

The cancellation of the STS certificate in no way diminishes the entity's obligation to pay the RAF, including any applicable late payment charges. If this Order is not protested, the company's STS Certificate No. 8634 shall be cancelled, effective December 31, 2008. If the company pays the RAF, including any applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's STS certificate shall be voluntary. If the company fails to protest the Order or pay the RAF, including any applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, then the company's STS certificate shall be cancelled administratively, and the collection of the unpaid RAF shall be referred to the Florida Department of Financial Services for further collection efforts. If the company's STS certificate is cancelled in accordance with this Order, the company shall be required to immediately cease and desist providing telecommunications service in Florida. This docket shall be closed administratively either upon receipt of the payment of the RAF, including any applicable late payment charges, or upon cancellation of the company's STS certificate. If Digital Community Networks, Inc.'s STS certificate is cancelled on this Commission's own motion and it subsequently decides to reapply for a certificate as a telecommunications company, Digital Community Networks, Inc. shall be required to first pay any outstanding fees, including accrued statutory late payment charges. We are vested with jurisdiction over these matters pursuant to Sections 350.113, 364.336, 364.339, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that pursuant to Rule 25-24.572, Florida Administrative Code, Digital Community Networks, Inc.'s STS Certificate No. 8634 is hereby cancelled effective December 31, 2008, on this Commission's own motion for failure to pay the 2008 Regulatory Assessment Fee pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the cancellation of the certificate in no way diminishes Digital Community Networks, Inc.'s obligation to pay the applicable Regulatory Assessment Fee, including any applicable late payment charges. If the company's STS certificate is cancelled and the company subsequently decides to reapply for a certificate as a telecommunications company, that company shall be required to first pay any outstanding fees, including accrued statutory late payment charges. It is further

ORDERED that if Digital Community Networks, Inc. pays the Regulatory Assessment Fee, including any applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, the cancellation of the certificate shall be deemed voluntary. It is further

ORDERED that if Digital Community Networks, Inc. does not pay the Regulatory Assessment Fee, including any applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, the collection of the Regulatory Assessment Fee shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if Digital Community Networks, Inc.'s certificate is cancelled in accordance with this Order, Digital Community Networks, Inc. shall immediately cease and desist providing shared tenant service in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed administratively either upon receipt of the Regulatory Assessment Fees or upon cancellation of the STS certificate.

By ORDER of the Florida Public Service Commission this _____ day of _____, _____.

ANN COLE
Commission Clerk

(SEAL)
TJB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on _____.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.