

State of Florida



RECEIVED-FPSC

MAY 29 PM 3:15

COMMISSION
CLERK

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: May 28, 2009
TO: Ann Cole, Commission Clerk - PSC, Office of Commission Clerk
FROM: Paula Isler, Research Assistant, Division of Regulatory Compliance *PJ*
RE: Docket No. 080477-TX - Compliance investigation of CLEC Certificate No. 8597, issued to Digital Express, Inc., for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

On May 20, 2009, the company withdrew its protest to Order No. PSC-08-0562-PAA-TX issued on August 29, 2008, via e-mail from Tom Armstrong, Vice President of Digital Express, Inc., to Ray Kennedy. Therefore, please document the withdrawal in Case Management System in Docket No. 080477-TX. Thanks.

Attachment

c: Office of the General Counsel (Timisha Brooks)

DOCUMENT NUMBER-DATE

05369 MAY 29 8

FPSC-COMMISSION CLERK

Ray Kennedy

From: Tom Armstrong [tom@dei.gccoxmail.com]
Sent: Wednesday, May 20, 2009 10:53 PM
To: Ray Kennedy
Cc: Tom Armstrong (Express)
Subject: RE: Public Service Commission Regulatory Fee Forms - Digital Express Docket No. 080477-TX

Ray,

We received advice from our counsel earlier this week and were following up with a few questions that he had for us. In general, he agrees that the Commission may not be able to waive fees called for in the statutes. He did ponder if our request might prevail at an administrative law hearing. The ultimate decision, as usual, came down to concept vs. cash or how much would we end up spending to accomplish our goal which did have a monetary value to it. Based on that evaluation of the situation, we have indeed decided to comply with your request and hereby withdraw our protest.

One of the follow up issues that our counsel inquired about was what bearing the relationship you referenced between Digital Express, Inc. (a CLEC) and Express Phone Service, Inc. (an ETC) had to do with Digital Express's protest. Given that the two entities are separately incorporated and file returns, reports and data requests as such, he was puzzled by the inference that proceeding with the protest by Digital might not be in the best interest of Express as an ETC. I advised him that we did not discuss this any further and could not offer any insight into that relationship by the Commission.

Tom Armstrong
Digital Express, Inc.
850-291-6415

From: Ray Kennedy [mailto:RKennedy@PSC.STATE.FL.US]
Sent: Wednesday, May 20, 2009 8:51 AM
To: tom@dei.gccoxmail.com
Subject: Public Service Commission Regulatory Fee Forms - Digital Express Docket No. 080477-TX

Good Morning Tom,

I did not hear back from you so I thought I would e-mail. I asked you to consider withdrawing your protest because the Commission is not able to waive the fees (they are laws that the Commission does not have authority to waive). I have pasted statutes below. You already have the rule from the Florida Administrative Code so I won't overload you with that.

Since the Commission can't waive the fees, it really serves no purpose to write a recommendation and have the Commission acknowledge they can't waive the fees. We do not argue with you that the forms can use some clarification. I will be doing the rulemaking matters (along with an attorney). It is an involved process and typically takes about 5-6 months. I have not started yet but hope to start soon.

If you are willing to withdraw, just respond to this e-mail stating that you want to withdraw. I will then file the e-mail with the Commission Clerk and we will close the docket. Again, it is your choice. If you do not want to withdraw, just let me know. Then we will file a motion to dismiss on June 4 (Agenda June 16) or June 18 (Agenda June 30).

Thank you,

Ray Kennedy

5/22/2009

Florida Public Service Commission
 2540 Shumard Oak Blvd.
 Tallahassee, FL 32399-0850
 Phone: 850-413-6584
 Fax: 850-413-6585
 E-Mail: rkennedy@psc.state.fl.us

364.336 Regulatory assessment fees.--Notwithstanding any provisions of law to the contrary, each telecommunications company licensed or operating under this chapter, for any part of the preceding 6-month period, shall pay to the commission, within 30 days following the end of each 6-month period, a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business, except, for purposes of this section and the fee specified in s. 350.113(3), any amount paid to another telecommunications company for the use of any telecommunications network shall be deducted from the gross operating revenue for purposes of computing the fee due. The commission shall by rule assess a minimum fee in an amount up to \$1,000. The minimum amount may vary depending on the type of service provided by the telecommunications company, and shall, to the extent practicable, be related to the cost of regulating such type of company. Differences, if any, between the amount paid in any 6-month period and the amount actually determined by the commission to be due shall, upon motion by the commission, be immediately paid or refunded. Fees under this section may not be less than \$50 annually. Such fees shall be deposited in accordance with s. 350.113. The commission may by rule establish criteria for payment of the regulatory assessment fee on an annual basis rather than on a semiannual basis.

History.--ss. 33, 49, ch. 90-244; s. 4, ch. 91-429; s. 22, ch. 95-403; s. 13, ch. 98-277; s. 19, ch. 2005-132.

350.113 Florida Public Service Regulatory Trust Fund; moneys to be deposited therein.--

(1) There is hereby created in the State Treasury a special fund to be designated as the "Florida Public Service Regulatory Trust Fund" which shall be used in the operation of the commission in the performance of the various functions and duties required of it by law.

(2) All fees, licenses, and other charges collected by the commission shall be deposited in the State Treasury to the credit of the Florida Public Service Regulatory Trust Fund to be used in the operation of the commission as authorized by the Legislature; however, penalties and interest assessed and collected by the commission shall not be deposited in the trust fund but shall be deposited in the General Revenue Fund. The Florida Public Service Regulatory Trust Fund shall be subject to the service charge imposed pursuant to chapter 215.

(3) Each regulated company under the jurisdiction of the commission, which company was in operation for the preceding 6-month period, shall pay to the commission within 30 days following the end of each 6-month period, commencing June 30, 1977, a fee based upon the gross operating revenues for such period. The fee shall, to the extent practicable, be related to the cost of regulating such type of regulated company. Differences, if any, between the amount paid in any 6-month period and the amount actually determined by the commission to be due shall, upon notification by the commission, be immediately paid or refunded. Each regulated company which is subject to the jurisdiction of the commission, but which did not operate under the commission's jurisdiction during the entire preceding 6-month period, shall, within 30 days after the close of the first 6-month period during which it commenced operations under, or became subject to, the jurisdiction of the commission, pay to the commission the prescribed fee based upon its gross operating revenues derived from intrastate business during those months or parts of months in which the regulated company did operate during such 6-month period. In no event shall payments under this section be less than \$25 annually.

(4) The commission shall provide each regulated company with written notice of the date that payment of the fee is due at least 45 days prior to such date. If any regulated company fails to pay the required fee by such date, the commission shall estimate the amount of fee due from such information as it may be able

5/22/2009

to obtain from any source and shall add 5 percent of such amount to the fee as a penalty if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which the failure continues, not to exceed a total penalty of 25 percent. The commission shall collect the fee and penalty, plus interest and all costs of collection, from the regulated company. However, no penalty shall be added to the fee if a return is made and the fee is paid before the date fixed in the notice given by the commission.

(5) The commission, for good cause shown by written request, may extend for a period not to exceed 30 days the time for paying any fee or for filing any report related thereto. If an extension is granted, there shall be collected a charge of 0.75 percent of the fee to be remitted for an extension of 15 days or less, or a charge of 1.5 percent of the fee for an extension of more than 15 days. No other penalty or interest shall be collected if such fee is remitted within the extension time granted. In lieu of paying the interest charge imposed by this subsection, a regulated company may remit an estimated amount of fee by the 30th day following a 6-month period. Any regulated company which remits an estimated fee payment by such date shall be granted a 30-day extension period in which to file and remit the actual fee due without the interest charge provided hereunder being imposed, unless the estimated fee payment remitted is less than 90 percent of the actual fee due for such period.

(6) All moneys in the Florida Public Service Regulatory Trust Fund shall be for the use of the commission in the performance of its functions and duties as provided by law, subject to the fiscal and budgetary provisions of general law.

(7) Notwithstanding the provisions of s. 350.111, as used in this section only, the term "regulated company" includes any rural electric cooperative or municipal electric utility.

History.—ss. 3, 6, ch. 80-289; ss. 2, 3, ch. 81-318; s. 15, ch. 83-339; s. 6, ch. 87-50; s. 45, ch. 91-221; s. 6, ch. 2006-214.