

State of Florida



# 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-

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**DATE:** November 16, 2010

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Regulatory Analysis (Earnhart) *SE*  
Office of the General Counsel (McKay) *Vsm AT* *DMG*

**RE:** Docket No. 100055-TI – Acknowledgment of registration as intrastate interexchange telecommunications company by Gaucho Sat. U.S.A Inc.

**AGENDA:** 11/30/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** ~~Staff~~ *All Commissioners - ac*

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\RAD\WP\100055.RCM.DOC

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### Case Background

On January 29, 2010, Gaucho Sat. U.S.A Inc. (Gaucho) filed an intrastate interexchange telecommunications company (IXC) Registration Form and a price schedule with the Florida Public Service Commission (Commission). Upon receipt of Gaucho's IXC registration, the Commission Clerk assigned the company Registration No. TK284. The registration is effective on the date that it is received by the Office of Commission Clerk.

Gaucho's price schedule reflects that its primary business consists of international and domestic toll services using Voice-Over-Internet Protocol (VoIP). Gaucho's price schedule did not reflect any rates for switched toll services. Gaucho was not offering any telecommunications

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services regulated by the Commission. Gaucho registered as an IXC to position itself for entry into the switched toll services market at some future date.

Even though Gaucho's IXC registration was active upon submission to the Office of Commission Clerk, staff reviews the IXC Registration Form and price schedule for accuracy and completeness. If required, staff contacts the company to obtain amendments to these documents. Staff also checks to see if the company has been previously registered or certificated as a telecommunications company in Florida. If any outstanding regulatory issues are identified, staff works with the company to resolve the issues. Staff also verifies that the company is actively registered with the Secretary of State to operate as a business in Florida.

In this instance, Gaucho was previously registered as an IXC (Registration No. TK225) in Florida. On May 27, 2009, the Commission issued Order No. PSC-09-0364-PAA-TI<sup>1</sup> imposing a \$500 penalty and cancelling Gaucho's IXC registration for the failure to pay the 2008 regulatory assessment fee. The company failed to protest the Order or pay the penalty and regulatory fee. The Commission cancelled Gaucho's IXC registration effective June 22, 2009. The company now owes the Commission 2008 and 2009 regulatory assessment fees, statutory late payment charges, and the penalty imposed by Order No. PSC-09-0364-PAA-TI.

In March 2010, staff made numerous attempts to contact the company via telephone to discuss the outstanding compliance issues. The company failed to return staff's calls. On April 29, staff e-mailed Gaucho's regulatory consultant asking him to assist in obtaining a response from Gaucho regarding the outstanding regulatory issues. The consultant was not able to obtain a response.

On May 28, 2010, staff mailed a certified letter advising Gaucho that failure to resolve the regulatory issues identified in Docket No. 090305-TI could result in the denial of the current IXC registration. Staff attempted to fax a copy of the letter to the facsimile number (305-402-6780) that Gaucho provided on the IXC Registration Form. Either the number was out-of-service or had been disconnected. Staff also e-mailed a copy of the letter to the company's and regulatory consultant's e-mail addresses listed on the registration form. On June 22, 2010, the United States Postal Service returned the certified letter to the Commission marked "Unclaimed." Neither Gaucho or the consultant responded to staff.

On August 2, 2010, staff called Gaucho using the telephone numbers provided on the IXC Registration Form. A recorded message indicated that the numbers were no longer in service. Subsequently, staff spoke with Gaucho's regulatory consultant. The consultant claimed that Gaucho was still his client and represented that Gaucho wanted the IXC registration. The consultant asked staff to provide him the exact amount of monies Gaucho owed the Commission. On September 9, 2010, staff e-mailed the consultant the exact amounts Gaucho needed to pay the Commission to resolve the issues in Docket No. 090305-TI. To resolve the issues, Gaucho is required to pay \$2,460 to the Commission. To date, Gaucho has not responded.

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<sup>1</sup> Docket No. 090305-TI, In Re: Compliance investigation of IXC Registration No. TK225, issued to Gaucho Sat. U.S.A Inc. for apparent first-time violation of Section 364.336, F.S., and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

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As required by Rule 25-4.0161(13), Florida Administrative Code (F.A.C.), Gaucho must pay all outstanding regulatory assessment fees, statutory late payment charges, and penalties on its prior IXC registration (TK225) before the Commission should consider acknowledging a new IXC registration (TK284). Because Gaucho has failed to pay, staff seeks the Commission's approval to cancel Gaucho's new IXC Registration No. TK284, cancel its price schedule, and remove Gaucho's name from the IXC register.

The Commission has jurisdiction over these matters pursuant to Sections 364.02, 364.04, 364.285, and 364.336, Florida Statutes (F.S.).

### Discussion of Issues

**Issue 1:** Should the Commission, on its own motion, remove Gaucho Sat. U.S.A Inc.'s name from the IXC register, and cancel its price schedule and Registration No. TK284?

**Recommendation:** Yes, the Commission, on its own motion, should remove Gaucho Sat. U.S.A Inc.'s name from the IXC register, and cancel its price schedule and Registration No. TK284. **(Earnhart, McKay)**

**Staff Analysis:** Gaucho filed an IXC Registration Form and a price schedule subsequent to the involuntary cancellation of its previous IXC Registration No. TK225, obtained on September 3, 2008. The Commission had cancelled Gaucho's prior IXC registration in Docket No. 090305-TI for failure to pay 2008 regulatory assessment fees. In Order No. PSC-09-0364-PAA-TI, issued on May 27, 2009, the Commission ordered that:

If any company listed in this Order has its respective tariff and registration cancelled, and subsequently decides to reapply as a telecommunications company, that company shall be required to first pay any outstanding penalties and cost of collection and fees, including any accrued statutory late payment charges.

Further, Rule 25-4.0161(13), F.A.C., provides:

A company that reapplies for a Certificate of Public Convenience and Necessity, or refiles for registration, must pay all prior unpaid regulatory assessment fees, plus the penalty and interest defined in subsection (8), and any prior unpaid penalty assessed in accordance with subsection (10).

As chronicled in the Case Background, Gaucho owes the Commission past due regulatory assessment fees, statutory late payment charges, and a penalty. Because Gaucho was not selling regulated telecommunications services to Florida consumers, staff offered Gaucho several opportunities to pay these outstanding debts.

Because Gaucho has failed to comply with Rule 25-4.0161(13), F.A.C., and Order No. PSC-09-0364-PAA-TI, the Commission may cancel Gaucho's IXC registration. Rule 25-24.474, F.A.C., provides that the Commission can cancel a company's registration based on the following grounds:

- Violation of the terms and conditions under which the authority was originally granted;
- Violation of Commission rule or order; or
- Violation of Florida Statutes.

According to its consultant, Gaucho is not selling regulated telecommunications services in Florida. However, Gaucho is still in violation of a Commission rule and order. Thus, staff recommends that the Commission should remove Gaucho Sat. U.S.A Inc.'s name from the IXC register, and cancel its price schedule and Registration No. TK284.

**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, F.A.C., within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), F.S., 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, F.S., hearing, the facts should be deemed admitted and the right to a hearing waived. If the company's IXC Registration No. TK284 and price schedule is cancelled and its name 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 intrastate interexchange telecommunications services in Florida. If there is no protest, this docket should be closed upon issuance of the Consummating Order. **(McKay)**

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