

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-

DATE: June 17, 2004

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

FROM: Division of Competitive Markets & Enforcement (Isler)
Office of the General Counsel (Rockette-Gray)

RE: Docket No. 040409-TX – Compliance investigation of LightWave Communications, LLC for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 06/29/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040409.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny granting LightWave Communications, LLC a voluntary cancellation of its CLEC certificate and cancel the certificate on the Commission's own motion?

Recommendation: Yes. (Isler; Rockette-Gray)

Staff Analysis: Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of Regulatory Assessment Fees by January 30 of the subsequent year for telecommunications companies, and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Rule 25-24.820, Florida Administrative Code, Revocation of a Certificate, provides that competitive local exchange telecommunications companies must request cancellation from the Commission in writing and either pay the current year's Regulatory Assessment Fee or provide the date it will be paid.

On December 12, 2003, the Division of the Commission Clerk & Administrative Services mailed the 2003 Regulatory Assessment Fee return notice to LightWave Communications, LLC. The return form and payment were due by January 30, 2004. On February 20, 2004, the Office of the General Counsel sent a delinquent notice via certified mail for nonpayment of the 2003 Regulatory Assessment Fee. The US Postal Service returned the certified receipt, which showed the delinquent notice was signed for and delivered. Also on February 20, 2004, the Commission received a letter dated February 16, 2004, from Mr. Maurice LeBrun, Assistant Controller, of LightWave Communications, LLC, which requested cancellation of its certificate and which enclosed a copy of a letter from the Florida Department of State, Division of Corporations, that advised LightWave Communications, LLC's application for Withdrawal of Authority was filed on October 20, 2003. Staff researched Commission records, but could not find record that the company had notified this Commission of its intent to withdraw from the state. Therefore, on February 23, 2004, staff wrote the company and advised that before staff could recommend a voluntary cancellation, it had to pay the 2003 and 2004 Regulatory Assessment Fees, plus late payment charges for the years 2002 and 2003. On March 1, 2004, the Commission received the company's payment for the 2003 Regulatory Assessment Fee and statutory penalty and interest charges; however, the company did not either pay the 2004 fee or provide a date certain it would be paid. As of June 4, 2004, payment has not been received and it appears the company is in apparent violation of Rules 25-4.0161 and 25-24.820, Florida Administrative Code.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.285, 364.336, and 364.337, Florida Statutes. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the company's obligation to pay Regulatory Assessment Fees, including statutory penalty and interest charges, if the certificate was active during any portion of the calendar year, including the cancellation year. Therefore, staff recommends that the Commission not grant LightWave Communications, LLC voluntary cancellation of its CLEC certificate. The Commission should cancel the company's certificate on its own motion with an effective date of February 20, 2004.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Commission take action as set forth in the following Staff Analysis. **(Rockette-Gray)**

Staff Analysis: 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 fails to pay the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, that company's certificate should be cancelled and the collection of the past due fees should be referred to the Department of Financial Services for further collection efforts. If the company's certificate is cancelled in accordance with the Commission's Order from this recommendation, LightWave Communications, LLC should be required to immediately cease and desist providing competitive local exchange telecommunications services in Florida.