

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: July 22, 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. 040403-TC – Compliance investigation of Daytona Telephone Company for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 08/03/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040403.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission grant Daytona Telephone Company a voluntary cancellation of its Pay Telephone Certificate No. 6006 with an effective date of June 23, 2004?

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 penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts. On December 12, 2003, the Division of the Commission Clerk & Administrative Services mailed the 2003 Regulatory Assessment Fee return notice. Payment was due by January 30, 2004.

On February 2, 2004, the Commission received a copy of the company's blank 2003 Regulatory Assessment Fee return form, along with a letter dated January 27, 2004, from Mr. Michael Boger, President, that advised Daytona Telephone Company had merged with Advantage Group of Florida Communications, LLC in January 2001. The company did not include payment of the minimum fee. On February 5, 2004, staff wrote Mr. Boger and explained that if he wished to cancel Daytona Telephone Company's certificate, it needed to comply with Rule 25-24.514, Florida Administrative Code, and pay the 2003 and 2004 Regulatory Assessment Fees, including statutory penalty and interest charges for 2003. A response was not received; therefore, staff faxed the company a note requesting a response.

On February 19, 2004, the Office of the General Counsel sent the company a delinquent notice via certified mail concerning payment of the 2003 Regulatory Assessment Fee. The US Postal Service returned the delinquent notice stamped "unclaimed." Staff established Docket No. 040403-TC on May 5, 2004, to address the company's request for cancellation.

Staff filed its recommendation on June 17, 2004, to deny the company's request for a voluntary cancellation since the Regulatory Assessment Fees remained unpaid. On June 21, Mr. Boger called staff and stated that he was under the impression Daytona Telephone Company's certificate had already been cancelled. He stated that he would pay the past due amount in full, along with the 2004 fee, and request deferral of this docket from the June 29, 2004 Agenda Conference. On June 24, 2004, the Commission received the company's full payment and a letter requesting deferral and a voluntary cancellation. Staff sought and received permission to defer this item from the June 29, 2004 Agenda Conference.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.285, 364.336, and 364.3375, 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. Accordingly, staff believes the Commission should grant the company a voluntary cancellation of its certificate with an effective date of June 23, 2004.

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Issue 2: Should this docket be closed?

Recommendation: Staff recommends that if the Commission approves staff's recommendation in Issue 1, this docket should be closed upon cancellation of the certificate as no other issues need to be addressed by the Commission. If the company's certificate is cancelled in accordance with the Commission's Order from this recommendation, Daytona Telephone Company should be required to immediately cease and desist providing pay telephone services in Florida. **(Rockette-Gray)**

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