

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: August 5, 2004

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

FROM: Division of Competitive Markets & Enforcement (Isler)
Office of the General Counsel (Rojas)

RE: Docket No. 040400-TC – Compliance investigation of Gary E. Akers d/b/a JB Telecom for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 08/17/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040400.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission grant Gary E. Akers d/b/a JB Telecom a voluntary cancellation of its Pay Telephone Certificate No. 4264 with an effective date of March 2, 2004?

Recommendation: Yes. (Isler; Rojas)

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. Rule 25-24.514, Florida Administrative Code, provides that companies must request cancellation in writing and provide a date certain the current year's Regulatory Assessment Fee will be paid.

On March 2, 2004, the Commission received payment of the company's 2003 Regulatory Assessment Fee, along with statutory penalty and interest charges. In addition, the company included a letter requesting cancellation of its certificate as it was no longer in the payphone business. Staff wrote the company on March 5, 2004, concerning payment of the 2004 Regulatory Assessment Fee and requested a response by March 31, 2004. The company did not respond; therefore, staff filed a recommendation on June 17, 2004, to deny the company a voluntary cancellation. This docket was subsequently deferred from the June 29, 2004, Agenda Conference. On July 13, 2004, the Commission received the company's payment and the 2004 Regulatory Assessment Fee return form. The company reported zero revenues for the years 2003 and 2004.

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 March 2, 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, Gary E. Akers d/b/a JB Telecom should be required to immediately cease and desist providing pay telephone services in Florida, if it has not already done so. **(Rojas)**

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