

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: October 21, 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: Compliance investigation for apparent violation of Rule 25-4.0161, FAC,
Regulatory Assessment Fees; Telecommunications Companies.

Docket No. 040841-TX - Tristar Communications Corp.
Docket No. 040842-TX - Atlas Communications, Ltd.
Docket No. 040843-TX - Max-Tel Communications, Inc. d/b/a Florida's
Max-Tel Communications, Inc.
Docket No. 040844-TX - Microsun Telecommunications, Inc.
Docket No. 040849-TX - O1 Communications of Florida, LLC
Docket No. 040854-TX - TalkingNets Holdings, LLC
Docket No. 040855-TX - Mercury Long Distance, Inc.
Docket No. 040856-TX - Direct Telephone Company, Inc.
Docket No. 040857-TX - Lionhart of Miami, Inc. d/b/a Astral Communications
Docket No. 040858-TX - Armour E611 Incorporated
Docket No. 040859-TX - Gulf Coast Telecom, Inc.

AGENDA: 11/02/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040841.RCM.DOC

Docket Nos. 040841-TX, 040842-TX, 040843-TX, 040844-TX, 040849-TX,
040854-TX, 040855-TX, 040856-TX, 040857-TX, 040858-TX, 040859-TX
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Discussion of Issues

Issue 1: Should the Commission impose a penalty and a cost of collection, together totaling \$500, or cancel the Competitive Local Exchange Carrier (CLEC) certificate for each company identified in Attachment A, with an effective date of December 31, 2004, for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code?

Recommendation: Yes. (Isler; Rockette-Gray)

Staff Analysis: See attached proposed Order.

In prior dockets, the Commission imposed monetary penalties against telecommunications companies for their apparent violation of Rule 25-4.0161, Florida Administrative Code. Further, any penalty payments received by the Commission were remitted to the Department of Financial Services for deposit in the General Revenue Fund. Staff's previous recommendations addressed a penalty, but simply did not address the cost of collecting the Regulatory Assessment Fees. In this recommendation, staff identifies both the penalty and the cost of collecting the Regulatory Assessment Fees. This recommendation is the same as those addressed by the Commission in prior Agendas with the exception that staff identifies the cost of collecting the fee and recommends that the cost of collection be subtracted from any penalty payments received and be deposited in the Florida Public Service Regulatory Trust Fund. The remaining balance after subtracting the cost of collection will be deposited in the State General Revenue Fund.

The reason staff identifies the cost of collection in this recommendation is that pursuant to Section 350.113, Florida Statutes, Florida Public Service Regulatory Trust Fund; monies to be deposited therein, the Commission shall collect the costs of collection from the regulated company. Section 350.113, Florida Statutes, provides in pertinent part:

(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 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. (emphasis added)

Collection costs consist of labor and material expenses that the Commission has incurred in its efforts to collect the Regulatory Assessment Fees. For any payment (full or partial) of the penalty and cost of collection received by the Commission, the cost of collection will be

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subtracted from the amount received and will be deposited in the Florida Public Service Regulatory Trust Fund, to offset the cost of collection incurred by the Commission. Any monetary amount exceeding the cost of collection will be deposited in the General Revenue Fund.

Issue 2: Should these dockets 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, 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 any 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 any company fails to pay the penalty and cost of collection, together totaling \$500, and Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the company's certificate should be cancelled administratively and the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. If any company's certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing competitive local exchange services in Florida. These dockets should be closed administratively either upon receipt of the payment of the penalty and cost of collection, and Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the company's certificate. **(Rockette-Gray)**

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

BEFORE THE PUBLIC SERVICE COMMISSION

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|---|----------------------|
| In re: Compliance investigation of Tristar Communications Corp. for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040841-TX |
| In re: Compliance investigation of Atlas Communications, Ltd. for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040842-TX |
| In re: Compliance investigation of Max-Tel Communications, Inc. d/b/a Florida's Max-Tel Communications, Inc. for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040843-TX |
| In re: Compliance investigation of Microsun Telecommunications, Inc. for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040844-TX |
| In re: Compliance investigation of O1 Communications of Florida, LLC for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040849-TX |
| In re: Compliance investigation of TalkingNets Holdings, LLC for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040854-TX |
| In re: Compliance investigation of Mercury Long Distance, Inc. for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040855-TX |
| In re: Compliance investigation of Direct Telephone Company, Inc. for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040856-TX |

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| In re: Compliance investigation of Lionhart of Miami, Inc. d/b/a Astral Communications for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies | DOCKET NO. 040857-TX |
| In re: Compliance investigation of Armour E611 Incorporated for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040858-TX |
| In re: Compliance investigation of Gulf Coast Telecom, Inc. for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040859-TX ORDER NO. ISSUED: |

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION ORDER IMPOSING PENALTIES AND
COLLECTION COSTS, AND REQUIRING PAYMENT OF DELINQUENT REGULATORY
ASSESSMENT FEES OR CANCELLING CLEC CERTIFICATES FOR VIOLATION OF
RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS
COMPANIES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

The Division of the Commission Clerk & Administrative Services advised our staff that the entities had not paid the Regulatory Assessment Fee (RAF) required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the years specified below. Also, accrued statutory late payment charges required by Section 350.113(4), Florida Statutes, for the year(s) specified below had not been paid. The entities listed below were scheduled to remit their respective 2003 RAFs by January 30, 2004. In addition, on May 7, 2004, our staff wrote the entities specified below and advised that payment of the 2003 RAF should be paid by May 28, 2004, to avoid dockets from being established. As of October 13,

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2004, the entities listed below have not paid the past due RAF, including statutory late payment charges, requested cancellation of their respective certificates as required by Rule 25-24.820, Florida Administrative Code, or proposed a settlement.

Pursuant to Section 364.285, Florida Statutes, this Commission may impose a penalty or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.820, Florida Administrative Code, establishes the requirements for cancellation of a certificate. The rule provides for this Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due. All entities that apply for certification receive a copy of our rules governing Competitive Local Exchange Telecommunications service.

| <u>ENTITY'S NAME</u> | <u>CERT. NO.</u> | <u>PAST DUE RAFS</u> | <u>PAST DUE LATE PAYMENT CHARGES</u> |
|---|------------------|--------------------------|--|
| Tristar Communications Corp. | 5450 | 2003 | 2002 2003 |
| Atlas Communications, Ltd. | 5284 | 2003 | 2003 |
| Max-Tel Communications, Inc. d/b/a Florida's Max-Tel Communications, Inc. | 5292 | 2003 | 2003 |
| Microsun Telecommunications, Inc. | 5623 | 2003 | 2003 |
| O1 Communications of Florida, LLC | 7302 | 2003 | 2002 2003 |
| TalkingNets Holdings, LLC | 7705 | 2002 2003 | 2002 2003 |
| Mercury Long Distance, Inc. | 7924 | 2003 | 2001 2003 |
| Direct Telephone Company, Inc. | 8084 | 2003 | 2003 |
| Lionhart of Miami, Inc. d/b/a Astral Communications | 8094 | 2003 | 2002 2003 |

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| <u>ENTITY'S NAME</u> | <u>CERT. NO.</u> | <u>PAST DUE RAFS</u> | <u>PAST DUE LATE PAYMENT CHARGES</u> |
|--------------------------|------------------|--------------------------|--|
| Armour E611 Incorporated | 8140 | 2003 | 2003 |
| Gulf Coast Telecom, Inc. | 8374 | 2003 | 2003 |

For the reason described above, pursuant to Rule 25-24.820(1) (b) and (c), Florida Administrative Code, we find it appropriate to cancel each entity's certificate for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, unless each entity pays a penalty and cost of collection, together totaling \$500, and remits all past due RAFs, along with accrued statutory late payment charges, to the Florida Public Service Commission. Each entity must comply with these requirements within 14 days after the issuance of the Consummating Order, as explained in the Notice of Further Proceedings attached to this Order. The payment should be identified with the docket number and the company's name. For any payment (full or partial) of the penalty and cost of collection received, the cost of collection will be subtracted and will be deposited in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. Any monetary amount exceeding the cost of collection will be remitted to the Florida Department of Financial Services for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes.

When the appropriate fees, statutory late payment charges, penalties and collection costs are received, each docket shall be closed. Should any of the entities fail to comply with this Order within 14 days after the issuance of the Consummating Order, the entity shall have its certificate cancelled, effective December 31, 2004. The collection of the past due RAF, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts, and the docket shall be closed. The cancellation of the certificate in no way diminishes any of the entities' obligation to pay applicable delinquent RAFs and accrued statutory late payment charges. If an entity's certificate is cancelled in accordance with this Order, that entity shall immediately cease and desist providing competitive local exchange services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 350.113, 364.336, 364.337, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each of the entities listed herein shall pay a penalty and cost of collection, together totaling \$500, the past due Regulatory Assessment Fees, and statutory late payment charges to the Florida Public Service Commission for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, within 14 days after the issuance of the Consummating Order. The cost of collection will be subtracted from any monies collected as payments (full or partial) of the penalty and cost of collection, and will be deposited, along with the past due RAFs, in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes.

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Attachment A

The statutory late payment charge and any portion of the penalty exceeding the cost of collection will be remitted to the Florida Department of Financial Services for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. It is further

ORDERED that should any of the entities fail to comply with this Order, that entity's certificate shall be cancelled, effective December 31, 2004, and the respective docket shall be closed. It is further

ORDERED that the cancellation of the certificate in no way diminishes any of the entities' obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory late payment charges. Any unpaid Regulatory Assessment Fees, and accrued statutory late payment charges, shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if an entity's certificate is cancelled in accordance with this Order, that entity shall immediately cease and desist providing Competitive Local Exchange Telecommunications services in Florida. It is further

ORDERED that any protest to the action proposed herein shall specify the entity or entities to which it applies. It is further

ORDERED that if a protest to this Order is filed, the protest shall not prevent the action proposed herein from becoming final with regard to the remaining entities listed in this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, these dockets shall be closed upon receipt of the imposed penalty and cost of collection, together totaling \$500, and Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the certificate.

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Attachment A

Date: October 21, 2004

By ORDER of the Florida Public Service Commission this _____ day of
_____, _____.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

DRG

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on _____.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.