

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: July 7, 2005

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

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

RE: Docket No. 050405-TI – Acknowledgment of cancellation of IXC Registration No. TJ595 by @ccess, LLC, effective March 1, 2005.

AGENDA: 07/19/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050405.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny @ccess, LLC's request for a voluntary cancellation and instead cancel IXC Registration No. TJ595 on the Commission's own motion with an effective date of March 1, 2005?

Recommendation: Yes. (Isler, McKay)

Staff Analysis: See attached proposed Order

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, 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, the company's tariff should be cancelled administratively, its name removed from the register, 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 the company's tariff 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 service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the company's tariff and removal from the register. (McKay)

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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Acknowledgment of cancellation of IXC
Registration No. TJ595 by @ccess, LLC,
effective March 1, 2005.

DOCKET NO. 050405-TI
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION ORDER CANCELLING INTRASTATE
INTEREXCHANGE TELECOMMUNICATIONS TARIFF AND REGISTRATION ON THE
COMMISSION'S OWN MOTION

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.

@ccess, LLC currently holds Intrastate Interexchange Telecommunications (IXC) Registration No. TJ595, issued by this Commission on January 4, 2002. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee (RAF) of \$50 if the registration 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. In addition, Rule 25-24.474, Florida Administrative Code, provides that an IXC requesting cancellation of its tariff and removal from the register must state its intent and date to pay the current Regulatory Assessment Fee. All entities that apply for registration receive a copy of our rules governing intrastate interexchange telecommunications service.

On March 1, 2005, this Commission received a letter from the company's President, Mr. Derek T. Sherrill, advising that @ccess, LLC ceased business operations on October 1, 2004, and requested cancellation of its tariff and removal from the register. Our staff wrote the company

on March 24, 2005, and explained that before a voluntary cancellation of the tariff and removal from the register could be recommended, the 2005 Regulatory Assessment Fee and the 2004 statutory late payment charges needed to be paid. As of June 23, 2005, the company has not paid the amounts due.

For the reasons described above, we deny @ccess, LLC's request for voluntary cancellation of its tariff and removal from the register. However, we find it appropriate to involuntarily cancel the tariff and remove its name from the register effective March 1, 2005, on this Commission's own motion for failure to comply with Rule 25-24.474, Florida Administrative Code, and pay the Regulatory Assessment Fee, pursuant to Section 364.336, Florida Statutes.

Since it appears @ccess, LLC is no longer in business, there would be no purpose in requiring it to pay a penalty. By cancelling the company's tariff and removing it from the register on this Commission's own motion, however, we would be able to track the company should it apply for another registration with us in the future. The cancellation of the tariff and removal from the register in no way diminishes the entity's obligation to pay applicable Regulatory Assessment Fee and accrued statutory late payment charges. If this Order is not protested, the company's IXC tariff and its name shall be removed from the register effective March 1, 2005. The collection of the past due fees shall be referred to the Florida Department of Financial Services for further collection efforts. If @ccess, LLC is removed from the register in accordance with this Order, the company shall immediately cease and desist providing intrastate interexchange telecommunications service in Florida. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.02, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED that @ccess, LLC's IXC tariff and registration is hereby cancelled effective March 1, 2005, on this Commission's own motion for failure to pay the 2005 Regulatory Assessment Fee, along with statutory late payment charges for the year 2004, pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the collection of the past due fees shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that the cancellation of the tariff and removal from the register in no way diminishes @ccess, LLC's obligation to pay the applicable Regulatory Assessment Fee and accrued statutory late payment charges. It is further

ORDERED that if @ccess, LLC's IXC tariff and registration is cancelled in accordance with this Order, @ccess, LLC shall immediately cease and desist providing intrastate interexchange telecommunications service in Florida. 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, this docket shall be closed upon receipt of the Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the tariff and removal from the register.

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)

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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.