

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: November 22, 2005

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

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

RE: Docket No. 050710-TI – Compliance investigation of Summit Telco, L.L.C., IXC
Registration No. TJ469, for apparent violation of Section 364.336, F.S.

AGENDA: 12/06/05 – Regular Agenda – Proposed Agency Action – Interested Persons May
Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050710.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission cancel Summit Telco, L.L.C.'s intrastate interexchange telecommunications company (IXC) tariff and Registration No. TJ469 with an effective date of December 31, 2005, and require the company to immediately cease and desist providing intrastate interexchange telecommunications service in Florida, for an apparent third violation of Section 364.336, Florida Statutes?

Recommendation: Yes, the company's IXC tariff should be cancelled and its name removed from the register for nonpayment of the 2004 Regulatory Assessment Fee for a third offense. (Isler, Fordham)

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's tariff and registration are cancelled 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. If the company fails to pay the Regulatory Assessment Fee, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the collection of the past due Regulatory Assessment Fee, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. This docket should be closed administratively upon cancellation of the company's tariff and registration. (Fordham)

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

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Summit
Telco, L.L.C., IXC Registration No. TJ469, for
apparent violation of Section 364.336, F.S.

DOCKET NO. 050710-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
ISILIO ARRIAGA

NOTICE OF PROPOSED AGENCY ACTION ORDER
CANCELLING INTRASTATE INTEREXCHANGE TELECOMMUNICATIONS COMPANY
TARIFF AND REGISTRATION AND REQUIRING PAYMENT OF REGULATORY
ASSESSMENT FEES

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.

Summit Telco, L.L.C. currently holds intrastate interexchange telecommunications company (IXC) Registration No. TJ469, issued by the Commission on February 5, 2001.

The Division of the Commission Clerk & Administrative Services (CCA) advised our staff that Summit Telco, L.L.C. 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 year 2004. Also, accrued statutory late payment charges required by Section 350.113(4), Florida Statutes, for the year 2004 has not been paid. Summit Telco, L.L.C. was scheduled to remit its 2004 RAFs by January 31, 2005. In addition to RAF payment notices sent by CCA, on July 29, 2005, our staff wrote Summit Telco, L.L.C. and advised that payment of the 2004 RAF should be paid by August 19, 2005, to avoid a docket from being established. As of November 15, 2005, Summit Telco, L.L.C. has not paid the past due RAF, including statutory late payment charges, requested cancellation of its registration as required by Rule 25-24.474, Florida Administrative Code, or proposed a settlement. Summit Telco, L.L.C. has a history of paying the Regulatory Assessment Fee after the due date. The company has paid the fee late or not at all every year since being granted an IXC registration in 2001. In addition, the company has had

two prior dockets for the same rule violation in which it proposed settlements to resolve the dockets.

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 registration receive a copy of our rules governing intrastate interexchange telecommunications service.

Docket No. 020734-TI was established on July 16, 2002, for nonpayment of the 2001 Regulatory Assessment Fee for Summit Telco, L.L.C. On October 21, 2002, Order No. PSC-02-1443-PAA-TI was issued, which imposed a \$500 fine or cancelled the company's registration. The company subsequently paid the past due fee and proposed a \$100 settlement. On December 5, 2002, Order No. PSC-02-1702-AS-TI was issued, which accepted the company's settlement offer. The company paid the settlement and the docket was closed.

Docket No. 030794-TI was established on August 11, 2003, for nonpayment of the 2002 Regulatory Assessment Fee. On October 24, 2003, the Commission issued Order No. PSC-03-1205-PAA-TI, which imposed a \$1,000 fine for a second offense or cancelled the company's registration. The company subsequently paid the past due fee and proposed a \$500 settlement. On February 11, 2004, Order No. PSC-04-0143-AS-TI was issued, which accepted the company's settlement offer. The settlement was paid and the docket closed.

Analysis

Pursuant to Section 364.285, Florida Statutes, this Commission may impose a penalty or cancel a tariff and registration if a company refuses to comply with Commission rules, Orders, or Florida Statutes. Since this is the third docket established for nonpayment of the Regulatory Assessment Fees, Summit Telco, L.L.C. should be well aware when the fees are due each year. The cancellation of a registration for a third offense is consistent with a prior Commission decision. In Docket No. 000968-TC, by Order No. PSC-00-1815-PAA-TC, issued October 4, 2000, the Commission cancelled James M. Bracewell d/b/a Southern Tele-Communications' pay telephone certificate for violating the Regulatory Assessment Fee rule in three separate dockets (Nos. 971340-TC, 981273-TC, and 000968-TC). Based on the above, we find that cancellation of Summit Telco, L.L.C.'s tariff and removal from the register is appropriate. There are no outstanding consumer complaints against Summit Telco, L.L.C.

Decision

Accordingly, we hereby cancel Summit Telco, L.L.C.'s IXC tariff and remove its name from the register. If payment of the past due fee, including statutory late payment charges, is not received within fourteen (14) calendar days after the issuance of the Consummating Order, the unpaid fees shall be turned over to the Florida Department of Financial Services for further

collection efforts and this docket shall be closed. The cancellation of the tariff and removal from the register in no way diminishes the company's obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory late payment charges. If our Order is not protested, the company's IXC tariff and Registration No. TJ469 shall be cancelled effective December 31, 2005. If Summit Telco, L.L.C.'s IXC tariff and registration are cancelled in accordance with our 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 by the Florida Public Service Commission that Summit Telco, L.L.C.'s IXC tariff and Registration No. TJ469 to provide intrastate interexchange telecommunications service is hereby cancelled, effective December 31, 2005. It is further

ORDERED that the cancellation of Summit Telco, L.L.C.'s tariff and registration in no way diminishes the company's 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 Summit Telco, L.L.C.'s tariff and registration are cancelled in accordance with this Order, the company 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 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.