

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: March 23, 2006

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

FROM: Division of Competitive Markets & Enforcement (Buys)
Office of the General Counsel (Scott)

RE: Docket No. 050838-TI – Compliance investigation of Primo Communications, Inc. for apparent violation of Rule 25-24.470, F.A.C., Registration Required.

AGENDA: 04/04/06 – 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\050838S.RCM.DOC

Case Background

Primo Communications, Inc. (Primo) is an interexchange company (IXC) located in Rochester Hills, Michigan. Primo was granted an IXC certificate (Registration No. TJ724) on February 28, 2003. On December 31, 2004, Primo's tariff was cancelled and the company was removed from the register for failing to pay Regulatory Assessment Fees (RAFs), a violation of Section 364.336, Florida Statutes.¹ However, the company apparently continued to provide intrastate interexchange telephone service after the cancellation of its tariff and removal from the IXC register.

¹ Docket No. 040938-TI, In re: Compliance Investigation of Primo Communications, Inc. for apparent violation of Section 364.336, F.S.

Docket No. 050838-TI

Date: March 23, 2006

- October 25, 2005 - Staff opened this docket to address the company's apparent failure to register as an IXC.
- January 10, 2006, - In Order No. PSC-06-0026-PAA-TI, the Commission imposed a penalty in the amount of \$25,000 on Primo for its apparent violation of Rule 25-24.470, Florida Administrative Code (F.A.C.), Registration Required.
- January 17, 2006 - Primo filed a protest to the Commission's Proposed Agency Action (PAA) Order.
- January 30, 2006 - Primo submitted its settlement proposal to resolve its apparent violation of Rule 25-24.470, F.A.C.
- March 3, 2006 – Primo filed its RAF returns for calendar years 2003, 2004, and 2005, and paid the delinquent RAFs totaling \$200.50.
- March 3, 2006 – Primo submitted a completed IXC registration form and filed its tariff in Docket No. 060195 - TI.
- March 6, 2006 – Primo's IXC registration and tariff became effective.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02, 364.04, and 364.285, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission accept Primo Communications, Inc.'s settlement offer to resolve its apparent violation of Rule 25-24.470, Florida Administration Code, Registration Required?

Staff Recommendation: Yes. The Commission should accept Primo Communications, Inc.'s settlement proposal to make a voluntary contribution to the Florida General Revenue Fund in the amount of \$5,000, to be paid in ten equal monthly installments of \$500 to resolve its apparent violation of Rule 25-24.470, F.A.C., Registration Required, and pay the \$500 penalty imposed in Order No. PSC-04-1198-PAA-TI. **(Buys, Scott)**

Staff Analysis: Rule 25-24.470(1), F.A.C. states:

No person shall provide intrastate interexchange telephone service without first filing an initial tariff containing the rates, terms, and conditions of service and providing the company's current contact information with the Division of the Commission Clerk and Administrative Services.

By the company's own admission, Primo failed to pay its RAFs for calendar year 2003 due to a management oversight. Consequently, in Docket No. 040938-TI the Commission removed the company from the IXC register and cancelled its tariff. Afterward, the company continued to provide intrastate interexchange telephone service in Florida without a valid tariff and registration in apparent violation of Rule 25-24.470(1), F.A.C.

On January 10, 2006, the Commission issued Order No. PSC-06-0026-PAA-TI, imposing a \$25,000 penalty on Primo for its apparent violation of Rule 25-24.470, F.A.C, Registration Required. Primo protested the Commission's Proposed Agency Action (PAA), and subsequently submitted a settlement offer to resolve the matter. In its settlement offer, Primo offers to do the following:

1. Pay the \$500 penalty imposed in Order No. PSC-04-1198-PAA-TI, issued December 3, 2004, in Docket No. 040938-TI.
2. Pay RAFs for calendar years 2003 and 2004, including statutory penalties and interest. (Primo paid all outstanding RAFs for 2003, 2004, and 2005 on March 1, 2006.)
3. Make a voluntary contribution to the Florida General Revenue Fund in the amount of \$5,000 – payable in ten monthly installments of \$500 each. The payments should be made payable to the Florida Public Service Commission.
4. Submit a completed IXC registration form and file a tariff. (Primo submitted its IXC registration form and tariff on March 3, 2006.)
5. Pledge that in the future Primo will always be compliant with Commission rules, decisions, and requests.

In its settlement offer, Primo indicated that it has less than 200 customers in Florida and earns less than \$7,200.00 annually in intrastate revenue. The company further indicated that the proposed penalty of \$25,000 is unbearable and would potentially put it out of business.

Primo's settlement offer is consistent with settlement offers that the Commission has previously accepted for similar types of apparent rule violations. For example, in Docket No. 030876-TI, In Re: Compliance investigation of IBGH Communications, LLC for apparent violation of Sections 364.02 and 364.04, Florida Statutes, the Commission accepted a settlement offer in the amount of \$5,000 for the company's failure to register and file a tariff prior to providing intrastate interexchange service in Florida. Additionally, in Docket No. 020664-TI, In Re: Compliance investigation of bigredwire.com, Inc. for apparent violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries, the Commission accepted the company's settlement proposal in the amount of \$5,000, paid in twelve monthly installments, for its failure to comply with Rule 25-24.470, F.A.C.

Accordingly, staff recommends that the Commission should accept Primo Communications, Inc.'s settlement proposal to make a voluntary contribution to the Florida General Revenue Fund in the amount of \$5,000, to be paid in ten equal monthly installments of \$500 to resolve its apparent violation of Rule 25-24.470, F.A.C., Registration Required, and pay the \$500 penalty imposed in Order No. PSC-04-1198-PAA-TI.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation 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.

The company should be required to pay to the Commission within fourteen (14) calendar days of the issuance of the Consummating Order in the amount of \$1000.00 - consisting of (1) the first \$500 monthly installment of the company's \$5,000 voluntary contribution, and (2) the \$500 penalty imposed in Order No. PSC-04-1198-PAA-TI, which includes RAF collection costs. Within 30 days of the Commission receiving Primo's initial payment of \$1,000.00, the company should be required to submit its second payment in the amount of \$500. Thereafter, Primo should be required to submit eight monthly payments in the amount of \$500 each. Each payment should be made within 30 day intervals. Payments should be identified by docket number and company name, and made payable to the Florida Public Service Commission. For the \$500 penalty imposed in Order No. PSC-04-1198-PAA-TI the RAF collection costs should be deducted from the \$500 and deposited in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. Any monetary amount exceeding the RAF collection cost, along with voluntary contribution, 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.

If Primo Communications, Inc. fails to pay in accordance with its settlement proposal, its tariff should be cancelled, its name should be removed from the IXC register, and the company should be required to immediately cease and desist providing all intrastate telecommunications services in Florida. This docket should be closed administratively upon receipt of the final payment of the voluntary contribution or upon cancellation of the company's tariff and removal of its name from the IXC register. **(Scott)**

Staff Analysis: Staff recommends that the Commission take action as set forth in its recommendation.