

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 1, 2007

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. 060817-TP – Request for cancellation of PATS Certificate No. 5900 and for acknowledgment of cancellation of IXC Registration No. TJ089 effective December 21, 2006, by SmartStop, Inc.

AGENDA: 03/13/07 – 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\060817.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny SmartStop, Inc., a voluntary cancellation of its IXC tariff and Registration No. TJ089 and cancel the tariff and remove the company's name from the register on the Commission's own motion with an effective date of December 21, 2006?

Recommendation: Yes, the company should be denied a voluntary cancellation as listed on Attachment A, and staff shall administratively process the voluntary cancellation of the company's pay telephone certificate in accordance with instructions in this Commission's Administrative Procedures Manual. (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 pays the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's tariff and the removal of its name from the register will be voluntary. If the company fails to pay the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the company's IXC tariff should be cancelled administratively and its name removed from the register, and the collection of the past due Regulatory Assessment Fees should be referred to the Florida Department of Financial Services for further collection efforts. If the company's IXC 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 or upon cancellation of the company's IXC tariff and removal of its name from the register. (McKay)

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: Request for cancellation of PATS
Certificate No. 5900 and for acknowledgement
of cancellation of IXC Registration No. TJ089
effective December 21, 2006, by SmartStop,
Inc.

DOCKET NO. 060817-TP
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. MCMURRIAN

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.

SmartStop, Inc. currently holds Intrastate Interexchange Telecommunications (IXC) Registration No. TJ089, issued by this Commission on July 14, 1998, and Pay Telephone Certificate No. 5900, issued by this Commission on August 18, 1998. Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee of \$50 for each certificate or registration if the certificate or 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 intrastate interexchange companies must pay any current and past due Regulatory Assessment Fees with its request for cancellation. All entities that apply for certification and registration receive a copy of our rules governing intrastate interexchange telecommunications service.

On December 21, 2006, the Commission received a letter from the company's president, Mr. Mark Gram, advising SmartStop, Inc. had ceased doing business in Florida on September 1, 2006, and requested cancellation. On January 3, 2007, our staff faxed a note to Mr. Gram

advising that the 2006 Regulatory Assessment Fee had to be paid on both the pay telephone certificate and the IXC registration. On January 16, 2007, this Commission received the company's 2006 Regulatory Assessment Fee return form, along with payment of the minimum fee, for its pay telephone certificate, but not the IXC registration. On February 1, 2007, our staff faxed Mr. Gram another note advising that the 2006 fee had to be paid on the IXC registration also. Our staff attached a copy of the IXC's 2006 return form and requested a response by February 16, 2007. As of March 1, 2007, the company's 2006 fee has not been received for its IXC registration.

For the reasons described above, we deny SmartStop, Inc.'s request for voluntary cancellation of its IXC tariff and removal of its name from the register. However, we find it appropriate to involuntarily cancel the IXC tariff and remove the company's name from the register, effective December 21, 2006, on this Commission's own motion for failure to comply with Rule 25-24.474, Florida Administrative Code, and pursuant to Section 364.336, Florida Statutes. SmartStop, Inc.'s request for cancellation of its pay telephone certificate is being handled administratively.

Since it appears SmartStop, Inc. does not provide service in Florida and has requested cancellation of its registration, there would be no purpose in requiring the company to pay a penalty. The cancellation of the IXC tariff and removal of its name from the register in no way diminishes the entity's obligation to pay the applicable Regulatory Assessment Fees. If this Order is not protested, the company's IXC tariff shall be cancelled, and Registration No. TJ089 removed from the register, effective December 21, 2006. If the company pays the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's IXC tariff and removal of its name from the register will be voluntary. If the company fails to protest the Order or pay the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the company's IXC tariff should be cancelled administratively and its name removed from the register, and the collection of the unpaid Regulatory Assessment Fees should be referred to the Florida Department of Financial Services for further collection efforts. If the company's IXC 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 or upon cancellation of the company's IXC tariff and removal of its name from the register. If SmartStop, Inc.'s IXC tariff is cancelled and its name removed from the register, and the company subsequently decides to reregister as an intrastate interexchange telecommunications company, that company shall be required to first pay any unpaid Regulatory Assessment Fees, including accrued statutory late payment charges. We are vested with jurisdiction over these matters pursuant to Sections 364.336, 364.02, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED that pursuant to Rule 25-24.474, Florida Administrative Code, SmartStop, Inc.'s IXC tariff and Registration No. TJ089 is hereby cancelled and its name removed from the register effective December 21, 2006, on this Commission's own motion for failure to pay the

2006 Regulatory Assessment Fee pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the cancellation of the IXC tariff, including removal of its name from the register, in no way diminishes SmartStop, Inc.'s obligation to pay the applicable Regulatory Assessment Fees. If SmartStop, Inc.'s IXC tariff is cancelled and its name removed from the register, and the company subsequently decides to reregister as an intrastate interexchange telecommunications company, that company shall be required to first pay any unpaid Regulatory Assessment Fees, including accrued statutory late payment charges. It is further

ORDERED that if SmartStop, Inc. pays the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, the cancellation of the tariff and removal of its name from the register shall be deemed voluntary. It is further

ORDERED that if SmartStop, Inc. does not pay the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, the collection of the Regulatory Assessment Fees shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if SmartStop, Inc.'s IXC tariff is cancelled and its name removed from the register 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 receipt of the Regulatory Assessment Fees, or upon cancellation of the IXC tariff and removal of the company's name 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.