

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-**

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**DATE:** May 21, 2008

**TO:** Office of Commission Clerk (Cole)

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

**RE:** Docket No. 080143-TI – Acknowledgment of cancellation of IXC Registration No. TJ989 by Cinergy Telecommunications, Inc., effective March 10, 2008.

**AGENDA:** 06/03/08 – 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\080143.RCM.DOC

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### Discussion of Issues

**Issue 1:** Should the Commission deny Cinergy Telecommunications, Inc., a voluntary cancellation of its intrastate interexchange telecommunications carrier (IXC) tariff and Registration No. TJ989 and cancel the tariff and remove the company's name from the register on the Commission's own motion with an effective date of March 10, 2008?

**Recommendation:** Yes, the company should be denied a voluntary cancellation as listed on Attachment A. (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 Fee 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 Fee 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 Fee, including any accrued statutory late payment charges, 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 Fee, including any accrued statutory late payment charges, 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: Acknowledgment of cancellation of IXC Registration No. TJ989 by Cinergy Telecommunications, Inc., effective March 10, 2008.	DOCKET NO. 080143-TI ORDER NO. ISSUED:
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The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
KATRINA J. MCMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

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.

Cinergy Telecommunications, Inc. currently holds Intrastate Interexchange Telecommunications (IXC) Registration No. TJ989, issued by this Commission on February 23, 2005. Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) 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.

On March 6, 2008, our staff received a telephone call from Ms. Cecilia Zurita, Vice President, advising she had received a delinquent notice from the Commission concerning nonpayment of the 2007 Regulatory Assessment Fee. She advised the company did not have any funds to pay the fee and asked what its options were. On March 7, 2008, our staff e-mailed Ms.

Zurita a note explaining that if the company wished to cancel its registration, the 2007 and 2008 fees needed to be paid, along with accrued late payment charges, and a letter requesting cancellation. Our staff explained that if the company wished to keep its registration active, only the 2007 fee, along with accrued late payment charges, needed to be paid. A copy of the 2007 Regulatory Assessment Fee return form was attached. On March 10, 2008, this Commission received the company's payment of the 2007 fee, along with a letter dated March 5, 2008, from Ms. Zurita, requesting cancellation of its IXC registration. On March 10, 2008, our staff e-mailed Ms. Zurita and explained that the 2008 fee also must be paid in order to be granted a voluntary cancellation and a copy of the 2008 return form was attached. The 2008 RAF remains unpaid.

For the reasons described above, we deny Cinergy Telecommunications, 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 March 10, 2008, 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.

Since it appears Cinergy Telecommunications, 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 Fee, including any accrued statutory late payment charges. If this Order is not protested, the company's IXC tariff shall be cancelled, and Registration No. TJ989 removed from the register, effective March 10, 2008. If the company pays the Regulatory Assessment Fee 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 Fee prior to the expiration of the Proposed Agency Action Order, then the company's IXC tariff shall be cancelled administratively and its name removed from the register, and the collection of the unpaid Regulatory Assessment Fee, including any accrued statutory late payment charges, shall 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 shall be required to immediately cease and desist providing telecommunications service in Florida. This docket shall be closed administratively either upon receipt of the payment of the Regulatory Assessment Fee or upon cancellation of the company's IXC tariff and removal of its name from the register. If Cinergy Telecommunications, Inc.'s IXC tariff is cancelled and its name removed from the register, and the company subsequently decides to reregister as a telecommunications company, that company shall be required to first pay any unpaid Regulatory Assessment Fees, including any 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, Cinergy Telecommunications, Inc.'s IXC tariff and Registration No. TJ989 is hereby cancelled and its name removed from the register effective March 10, 2008, on this Commission's own motion for failure to pay the 2008 Regulatory Assessment Fee, including accrued statutory late payment charges, in full 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 Cinergy Telecommunications, Inc.'s obligation to pay the applicable Regulatory Assessment Fee, including any accrued statutory late payment charges. If Cinergy Telecommunications, Inc.'s IXC tariff is cancelled and its name removed from the register, and the company subsequently decides to reregister as a 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 Cinergy Telecommunications, Inc. pays the Regulatory Assessment Fee, including accrued statutory late payment charges, 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 Cinergy Telecommunications, Inc. does not pay the Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, the collection of the Regulatory Assessment Fee shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if Cinergy Telecommunications, 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 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 Office of Commission Clerk, 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 administratively either upon receipt of the payment of the Regulatory Assessment Fee or upon cancellation of the company's IXC tariff and removal of its name from the register.

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

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ANN COLE  
Commission Clerk

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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 Office of Commission Clerk, 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.

Docket No. 080143-TI  
Date: May 21, 2008

Attachment A