

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: October 30, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Isler)
Office of the General Counsel (Brooks)

RE: Docket No. 080349-TI – Compliance investigation of IXC Registration No. TJ008, issued to Executive Business Centers, Inc., for apparent fourth-time violation of Section 364.336, F.S. and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 11/13/08 – 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\RCP\WP\080349.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission impose a penalty and a cost of collection, together totaling \$4,000, or cancel the Intrastate Interexchange Carrier (IXC) tariff and remove Executive Business Centers, Inc., TJ008, from the register for an apparent fourth violation of Section 364.336, Florida Statutes, and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies?

Docket No. 080349-TI
Date: October 30, 2008

Recommendation: Yes, Executive Business Centers, Inc. should pay a penalty and a cost of collection, together totaling \$4,000, or have its IXC tariff cancelled and its name removed from the register, as listed on Attachment A. (Isler, Brooks)

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 penalty and cost of collection, together totaling \$4,000, and Regulatory Assessment Fee, including statutory late payment charges, 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 penalty and cost of collection, and Regulatory Assessment Fee, including accrued statutory late payment charges, or upon cancellation of the company's IXC tariff and removal of its name from the register. (Brooks)

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 IXC
Registration No. TJ008, issued to Executive
Business Centers, Inc., for apparent fourth-
time violation of Section 364.336, F.S. and
Rule 25-4.0161, F.A.C., Regulatory
Assessment Fees; Telecommunications
Companies.

DOCKET NO. 080349-TI
ORDER NO.
ISSUED:

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 IMPOSING PENALTY AND
COLLECTION COST, AND REQUIRING PAYMENT OF DELINQUENT REGULATORY
ASSESSMENT FEE, OR CANCELLING IXC TARIFF AND REMOVAL FROM THE
REGISTER FOR VIOLATION OF SECTION 364.336, FLORIDA STATUTES, AND RULE
25-4.0161, FLORIDA ADMINISTRATIVE CODE, REGULATORY ASSESSMENT FEES;
TELECOMMUNICATIONS COMPANIES

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.

Pursuant to Rule 25-4.0161(10) and (11), Florida Administrative Code, telecommunications companies that fail to pay the Regulatory Assessment Fee (RAF), including any statutory late payment charges, within 15 days after receiving a delinquent notice, shall be automatically penalized \$500 for a first offense, \$1,000 for a second offense, and \$2,000 for a third offense. For a company's fourth-time failure to pay the RAF, Rule 25-4.0161(12), Florida Administrative Code, provides that Commission staff shall file a recommendation to the Commission for further action. Penalty amounts include collection costs. If an entity fails to pay the Regulatory Assessment Fee in full, including accrued statutory late payment charges, along with the penalty amount, that entity's intrastate interexchange telecommunications carrier (IXC) tariff and registration shall be cancelled.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee 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.

On March 11, 2008, the company postmarked its 2007 RAF return showing \$1,313.72 revenues and included a check for partial payment of the fee. However, the check was subsequently returned by the company's bank for insufficient funds. Our staff contacted the company to attempt collection but the 2007 fee and accrued statutory late payment charges remain unpaid.

The company failed to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. Executive Business Centers, Inc. has had three prior dockets for the same rule violation. In each prior docket (Nos. 001283-TI, 030760-TI, 070427-TI), the company either proposed a settlement or paid the penalty imposed to resolve the docket.

Accordingly, we hereby find it appropriate to cancel Executive Business Centers, Inc.'s IXC tariff and registration for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, unless it pays a penalty and cost of collection, together totaling \$4,000, and remits the unpaid Regulatory Assessment Fees, along with accrued statutory late payment charges, to the Florida Public Service Commission.

If the company pays the penalty and cost of collection, together totaling \$4,000, and remits the past due Regulatory Assessment Fees, along with accrued statutory late payment charges, prior to the expiration of the Proposed Agency Action Order, then the company's IXC tariff and registration will remain active. If the company fails to protest the Order or pay the penalty and cost of collection, together totaling \$4,000, and fails to remit the past due Regulatory Assessment Fees, along with accrued statutory late payment charges, prior to the expiration of the Proposed Agency Action Order, then its IXC tariff and registration should be cancelled administratively, and the collection of the past due Regulatory Assessment Fee should be referred to the Florida Department of Financial Services for further collection efforts. If the company's IXC tariff and registration are cancelled in accordance with this Commission's Order, the company should be required to immediately cease and desist providing intrastate interexchange service in Florida. This docket should be closed administratively either upon receipt of the payment of the penalty and cost of collection, together totaling \$4,000, and the past due Regulatory Assessment Fees, along with any accrued statutory late payment charges, or upon cancellation of the company's IXC tariff and registration. If the company's IXC tariff and registration are cancelled in accordance with this Order and it subsequently decides to reapply as a telecommunications company, the company shall be required to first pay the penalty and cost of collection, together totaling \$4,000 and any outstanding fees, including all accrued statutory late payment charges. We are vested with jurisdiction over these matters pursuant to Sections 350.113, 364.336, 364.02, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Executive Business Centers, Inc., shall pay a penalty and cost of collection, together totaling \$4,000, and any past due Regulatory Assessment Fees, including accrued statutory late payment charges, to the Florida Public Service Commission for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, by the end of the protest period. The cost of collection will be subtracted from any monies collected as payments (full or partial) of the penalty and cost of collection, and will be deposited, along with the past due Regulatory Assessment Fees, in the Florida Public Service Commission Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. The statutory late payment charges and any portion of the penalty exceeding the cost of collection 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. It is further

ORDERED that should Executive Business Centers, Inc., fail to comply with this Order, its tariff and Registration No. TJ008 shall be cancelled. It is further

ORDERED that the cancellation of the tariff and registration in no way diminishes the company's obligation to pay applicable delinquent Regulatory Assessment Fees, and any accrued statutory late payment charges. If the company has its tariff and registration cancelled, and subsequently decides to reapply as a telecommunications company, the company shall be required to first pay any outstanding penalties and cost of collection and fees, including 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 Executive Business Centers, Inc.'s tariff and Registration No. TJ008 is 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 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 upon receipt of the imposed penalty and cost of collection, together totaling \$4,000, and Regulatory Assessment Fees, including statutory late payment charges, from the company or upon cancellation of its IXC tariff and registration.

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

Ann Cole
Commission Clerk

(S E A L)

TJB

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.