

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

**DATE:** APRIL 22, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF TELECOMMUNICATIONS (ISLER) *Pip*  
DIVISION OF LEGAL SERVICES (K. PEÑA) *CB*

**RE:** DOCKET NO. 981294-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PATS CERTIFICATE NO. 4606 ISSUED TO VERTEX ENTERPRIZE & INVESTMENT, INC., FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

**AGENDA:** 05/04/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\981294.RCM

CASE BACKGROUND

- 06/01/96 - Vertex Enterprize & Investment, Inc. obtained Florida Public Service Commission PATS Certificate No. 4606.
- 12/11/97 - The Division of Administration mailed the 1997 regulatory assessment fee (RAF) notice by certified mail. The United States Postal Service (USPS) returned the receipt, which showed the RAF notice was signed for and delivered on December 18, 1997.
- The Division of Administration advised staff by memorandum that this company had not paid its 1997 RAF, plus the 1997 statutory penalty and interest charges.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

- **11/24/98** - After the case was docketed, but prior to a recommendation being filed, the company's president, Mr. Hensley Hewam, contacted staff and advised that he would pay the past due amount, pay future regulatory assessment fees on a timely basis, and make a settlement offer.
- **12/08/98** - The Division of Administration's records reflect payment of the past due amount in full.
- **12/10/98** - The company wrote and proposed to pay a \$100 settlement and pay future regulatory assessment fees on a timely basis.
- **02/19/99** - Order No. PSC-99-0339-AS-TC was issued, which approved the company's offer to contribute \$100 to the State General Revenue Fund. The contribution was due by February 26, 1999.
- **02/26/99** - Staff called the telephone number on the RAF form recently returned by the company. A recording advised that the number had been disconnected. Staff then called the telephone number listed on his settlement proposal. The person answering the phone stated that she had never heard of Mr. Hewam and confirmed that staff had dialed the correct telephone number.
- **03/23/99** - Staff wrote the company a certified letter and asked about the company's intention to pay the \$100 contribution, advised the company it may be in violation of the reporting requirements rule, and requested a response by April 7, 1999.

As of April 15, the company still has not paid the contribution or responded to staff's letter. Therefore, staff believes the following recommendations are appropriate.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission impose a \$500 fine or cancel the company's certificate for apparent violation of Rule 25-24.520, Florida Administrative Code, Reporting Requirements?

**RECOMMENDATION:** Yes. The Commission should impose a \$500 fine or cancel the company's certificate if the information required by Rule 25-24.520, F.A.C. and fine are not received by the Commission within five business days after the conclusion of the 21-day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the required information and fine are not received, the company's pay telephone certificate should be canceled with an effective date of December 31, 1998. (Isler)

**STAFF ANALYSIS:** Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.514, Florida Administrative Code, establishes the requirements for cancellation of a pay telephone company certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Pursuant to Rule 25-24.520, Florida Administrative Code, each company is allowed 10 days after a change occurs to file updated information indicating any changes in the certificate holder's address (including street name and address, post office box, city), telephone number and any change in the name and address of the individual who is serving as primary liaison with the Commission.

On February 26, staff called the telephone number on the RAF form recently returned by the company. A recording advised that the number had been disconnected. Staff then called the telephone number listed on his settlement proposal. The person answering the phone stated that she had never heard of Mr. Hewam and confirmed that staff had dialed the correct telephone number. More than 10 days have passed and the company has not provided staff with its correct telephone number.

Accordingly, staff recommends that the Commission assess a \$500 fine for failure to comply with the Commission rules or cancel the company's certificate if the fine and information required by Rule 25-24.520, Florida Administrative Code, Reporting

DOCKET NO. 981294-TC  
DATE: APRIL 22, 1999

Requirements, are not received by the Commission within five business days after the conclusion of the 21-day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the required information and fine are not received, the company's certificate should be canceled with an effective date of December 31, 1998.

**ISSUE 2:** Should the Commission impose a \$10,000 fine or cancel the company's certificate for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

**RECOMMENDATION:** Yes. The Commission should impose a \$10,000 fine or cancel the company's certificate if the fine and response to staff's request for information as required by Rule 25-4.043, F.A.C. are not received by the Commission within five business days after the conclusion of the 21-day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the required response and fine are not received, the company's certificate should be canceled with an effective date of December 31, 1998. (Isler)

**STAFF ANALYSIS:** Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.514, Florida Administrative Code, establishes the requirements for cancellation of a PATS certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Rule 25-24.505, F.A.C., Scope, incorporates Rule 25-4.043, Florida Administrative Code, which states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

On March 23, 1999, staff wrote the company a certified letter and asked about the company's intention to pay the \$100 contribution, advised the company it may be in violation of the reporting requirements rule, and requested a response by April 7, 1999. As of April 15, the company still has not paid the contribution or responded to staff's letter.

Accordingly, staff recommends that the Commission assess a \$10,000 fine for failure to comply with the Commission rules or cancel the company's certificate if the fine and response to staff inquiries as required by Rule 25-4.043, Florida Administrative Code, are not received by the Commission within five business days

DOCKET NO. 981294-IC  
DATE: APRIL 22, 1999

after the conclusion of the 21-day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the required information and fine are not received, the certificate should be canceled.

**Issue 3:** Should the Commission impose a \$20,000 fine or cancel the company's certificate for failure to comply with Commission Order PSC-99-0339-AS-TC?

**RECOMMENDATION:** Yes. The Commission should impose a \$20,000 fine or cancel the company's certificate if the company does not pay the fine or comply with Order No. PSC-99-0339-AS-TC within five business days after the conclusion of the 21-day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the required response and fine are not received, the company's certificate should be canceled with an effective date of December 31, 1998. (Isler)

**STAFF ANALYSIS:** Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.514, Florida Administrative Code, establishes the requirements for cancellation of a PATS certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

On February 19, 1999, Order No. PSC-99-0339-AS-TC was issued, which approved the company's offer to contribute \$100 to the State General Revenue Fund. The contribution was due by February 26, 1999.

When the fine was not paid as ordered by the Commission, staff attempted to call the company, but was unsuccessful. Therefore, on March 23, 1999, staff wrote the company a certified letter and asked about the company's intention to pay the \$100 contribution, advised the company it may be in violation of the reporting requirements rule, and requested a response by April 7, 1999. As of April 15, the company still has not paid the contribution or responded to staff's letter.

According, staff recommends that the Commission impose a \$20,000 fine or cancel the company's certificate if the company does not pay the fine or comply with Order No. PSC-99-0339-AS-TC within five business days after the conclusion of the 21-day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not

DOCKET NO. 981294-10  
DATE: APRIL 22, 1999

protested and the required response and fine are not received, the company's certificate should be canceled with an effective date of December 31, 1998.

**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** Yes, if no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final. Upon payment of the fines, or cancellation of the certificate, this docket should be closed. (K. Peña)

**STAFF ANALYSIS:** Whether staff's recommendation on Issues 1 through 3 are approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon payment of the fines, or upon cancellation of the certificate.