

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

DATE: NOVEMBER 20, 2000

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *Pij*
DIVISION OF LEGAL SERVICES (ISAAC) *RNB dnc*

RE: DOCKET NO. 001267-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 5273 ISSUED TO FIBERNET, INC. D/B/A FIBERNET TELEMAGEMENT, INC. FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 12/05/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001267.RCM

CASE BACKGROUND

- 11/22/97 - This company was granted IXC Certificate No. 5273.
- 12/18/98 - Docket No. 981900-TI was established for nonpayment of the 1997 Regulatory Assessment Fee (RAF). On April 21, 1999, Order No. PSC-0812-AS-TI was issued which accepted the company's proposal to pay future RAFs on a timely basis and its offer to pay a \$100 contribution. The company paid the 1997 and 1998 past due fees and reported no revenues on its 1998 Return for the period ended December 31, 1998. The company paid the \$100 settlement and the docket was closed.
- 12/08/99 - The Division of Administration mailed the 1999 RAF notice. Payment was due January 31, 2000.

DOCUMENT NUMBER-DATE

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- **02/29/00** - The Division of Administration mailed a delinquent notice to the company.
- **11/15/00** - As of this date, the company has not paid the past due amount.

The Commission is vested with jurisdiction over this matter through the provision of Section 364.336, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$1,000 fine or cancel Fibernet, Inc. d/b/a Fibernet Telemanagement, Inc.'s certificate for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$1,000 fine or cancel the company's certificate if the fine and the regulatory assessment fees, including statutory penalty and interest charges, are not received by the Commission within five business days after the issuance of the Consummating Order. 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 fine and regulatory assessment fees, including statutory penalty and interest charges, are not received, the company's Certificate No. 5273 should be canceled administratively. (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 25-24.474, Florida Administrative Code, establishes the requirements for cancellation of an interexchange telecommunications company certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of Administration's records show that the company had not paid its 1999 regulatory assessment fee, plus statutory penalty and interest charges. Therefore, it appears the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies and has not requested cancellation of its certificate in compliance with Rule 25-24.474, Florida Administrative Code. This fine is consistent with amounts used for recent, similar violations.

This is the second docket opened against Fibernet, Inc. d/b/a Fibernet Telemanagement, Inc. for nonpayment of the RAF. On April

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21, 1999, Order No. PSC-99-0812-AS-TI was issued in Docket No. 981900-TI, which accepted the company's settlement proposal. The company paid the past due fees and the \$100 settlement, and the docket was closed.

Accordingly, staff recommends that the Commission assess a \$1,000 fine for failure to comply with the Commission rules or cancel the company's certificate if the fine and the regulatory assessment fees, along with statutory penalty and interest charges, are not paid within five business days after the issuance of the Consummating Order. 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 fine and regulatory assessment fees, including statutory penalty and interest charges, are not received, the company's Certificate No. 5273 should be canceled administratively.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed upon receipt of the fine and fees or cancellation of the certificate, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action order. (Isaac)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is 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 receipt of the fine and fees or cancellation of the certificate.