

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: June 17, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Curry) *KC*
Office of the General Counsel (Scott) *KS*

RE: Docket No. 040426-TX – Compliance investigation of Foxtel, Inc. for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 06/29/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040426.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission impose a penalty in the amount of \$500 against Foxtel, Inc. for its apparent violation of Rule 25-4.0161, Florida Administration Code, Regulatory Assessment Fees; Telecommunications Companies.

Recommendation: Yes. (Curry, Scott)

Staff Analysis: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a penalty or cancel a certificate if a company refuses to comply with the Commission rules or any provision of Chapter 364, Florida Statutes. 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 late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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Foxtel, Inc. is a certificated competitive local exchange telecommunications company (CLEC) based in Reno, Nevada that provides competitive local exchange telecommunications services in Florida. On December 3, 2003, staff contacted the company's liaison and was informed that Foxtel, Inc. was no longer in business. On December 12, 2003, the Division of the Commission Clerk & Administrative Services mailed the 2003 RAF return notice to Foxtel. The company's RAF payment was due by January 30, 2004. On February 19, 2004, the Office of General Counsel mailed a delinquent notice via certified mail to the company for nonpayment of its 2003 RAF. Both letters were returned by the United States Postal Service. The company moved and left no forwarding address. As required by Rule 25-24.0161, Florida Administrative Code, Foxtel, Inc. has failed to pay its 2003 Regulatory Assessment Fees (RAF). Therefore, Foxtel is in apparent violation of Rule 25-4.0161, Florida Administration Code, Regulatory Assessment Fees; Telecommunications Companies.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.285, 364.336, and 364.337, Florida Statutes. Foxtel has failed to pay its 2003 Regulatory Assessment Fees, plus statutory penalty and interest charges, in compliance with Rule 25-4.0161, Florida Administrative Code. Foxtel also has not requested cancellation of its certificate in compliance with Rule 25-24.820, Florida Administrative Code. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the company's obligation to pay RAF's, including statutory penalty and interest charges, if the certificate was active during any portion of the calendar year, including the cancellation year. Further the amount of the proposed penalty is consistent with penalties previously imposed by the Commission upon other competitive local exchange telecommunications companies for similar violations. Therefore, staff recommends that the Commission impose a penalty upon Foxtel in the amount of \$500, for its apparent violation of Rule 25-4.0161, Florida Administration Code, Regulatory Assessment Fees; Telecommunications Companies.

Docket No. 040426-TX

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Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Commission take action as set forth in the following Staff Analysis. (Scott)

Staff Analysis: 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 Foxtel fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If Foxtel fails to pay the penalty and Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, Certificate No. 8041 should be cancelled administratively and the collection of the past due fees should be referred to the Department of Financial Services for further collection efforts. This docket should be closed administratively upon either the receipt of the payment of the penalty and Regulatory Assessment Fees, including statutory late payment charges, or upon the cancellation of the company's certificate. If Foxtel's certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing competitive local exchange services in Florida.