

State of Florida



Public Service Commission

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

RECEIVED-FPSC

JUN 17 AM 9:36

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: June 17, 2004

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

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

RE: Docket No. 040408-TI – Compliance investigation of Resort Network Services LLC for apparent violation of Section 364.336, Florida Statutes.

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\040408.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny granting Resort Network Services LLC a cancellation of its IXC tariff and voluntary removal from the register and cancel the company's tariff and remove its name from the register on the Commission's own motion?

Recommendation: Yes. (Isler; Rojas)

Staff Analysis: 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.

On December 12, 2003, the Division of the Commission Clerk & Administrative Services mailed the 2003 Regulatory Assessment Fee return notice to Resort Network Services LLC. The

DOCUMENT NUMBER-DATE

06704 JUN 17 04

FPSC-COMMISSION CLERK

return form and payment were due by January 30, 2004. On February 20, 2004, the Office of the General Counsel sent a delinquent notice via certified mail for nonpayment of the 2003 Regulatory Assessment Fee. The US Postal Service returned the certified receipt, which showed the delinquent notice was signed for and delivered on March 1, 2004. On March 15, 2004, the Commission received a letter from Mr. Peter Farrell, CEO, which advised the company ceased doing business in Florida at the end of 2003 and had no customers. Staff wrote the company on March 16, 2004, and advised it to pay the 2003 and 2004 Regulatory Assessment Fees, plus late payment charges for the years 2002 and 2003. As of June 3, 2004, payment has not been received and it appears the company is in apparent violation of Section 364.336, Florida Statutes.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.285, 364.336, and 364.337, Florida Statutes. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's tariff and removal from the register does not relieve the company's obligation to pay Regulatory Assessment Fees, including statutory penalty and interest charges, if the registration was active during any portion of the calendar year, including the cancellation year. Therefore, staff recommends that the Commission not grant Resort Network Services LLC cancellation of its tariff and voluntary removal from the register. The Commission should cancel Resort Network Services LLC's tariff and remove it from the register on the Commission's own motion with an effective date of March 15, 2004.

Issue 2: Should this docket be closed?

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

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 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 Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, that company's tariff should be cancelled, its name removed from the register administratively, and the collection of the past due fees should be referred to the Department of Financial Services for further collection efforts. If the company's tariff is cancelled and its name removed from the register in accordance with the Commission's Order from this recommendation, Resort Network Services LLC should be required to immediately cease and desist providing intrastate interexchange services in Florida. If the company has its tariff cancelled and name removed from the register, and subsequently decides to reapply for registration as an intrastate interexchange company, Resort Network Services LLC should be required to first pay any outstanding Regulatory Assessment Fees, including statutory late payment charges.