

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
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MEMORANDUM

APRIL 2, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *GP*  
DIVISION OF COMMUNICATIONS (MOSES) *MS*  
DIVISION OF ADMINISTRATION (TRIBBLE) *TR*

RE: DOCKET NO. 961143-TI - REQUEST FOR WAIVER OF PENALTY  
RELATED TO LATE PAYMENT OF REGULATORY ASSESSMENT FEES, BY  
EXCEL TELECOMMUNICATIONS, INC.

AGENDA: APRIL 14, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\961143TI.RCM

CASE BACKGROUND

On August 7, 1996, Fiscal Services advised Excel Telecommunications, Inc., (Excel) that its payment of its regulatory assessment fee for the period January 1, 1996, through June 30, 1996, was received late. Excel was to remit penalty and interest charges in the total amount of \$1,013.32, pursuant to Section 350.113(4), Florida Statutes, by August 21, 1996. This recommendation concerns Excel's request that the Commission waive the penalty and associated interest charges.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission dismiss Excel Telecommunications, Inc.'s request to waive the penalty and associated interest for late payment of its regulatory assessment fee?

RECOMMENDATION: Yes. Excel Telecommunications, Inc., should be directed to make payment of the penalty within 30 days of the Commission's order, with interest accruing to the date of payment.

STAFF ANALYSIS: As noted in the Case Background, on August 7, 1996, Fiscal Services advised Excel that its payment of its regulatory assessment fee for the period January 1, 1996, through June 30, 1996, was received late. As a result, Excel was to remit

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penalty and interest charges in the total amount of \$1,013.32, pursuant to Section 350.113(4), Florida Statutes, by August 21, 1996. Excel responded on September 10, 1996, stating that the late payment was not due to willful neglect, but reasonable cause. It requested that the Commission waive the penalty.

Excel acknowledged that payment of its regulatory assessment fee was due on July 30, 1996. It stated that its tax department was processing 324 returns due on July 30 and 86 returns due on July 31, and that the return to the Commission was inadvertently placed in the stack of returns due on July 31. Excel noted that its payment history with this Commission is excellent and that it has taken steps to avoid repetition of the error that led to the present late payment.

Section 350.113(3), Florida Statutes, provides as follows:

Each regulated company under the jurisdiction of the commission ... shall pay to the commission within 30 days following the end of each 6-month period ... a fee based upon the gross operating revenues for such period subject to the limitations of this subsection.

Section 350.113(4), Florida Statutes, moreover, provides as follows:

The commission shall provide each regulated company with written notice of the date that payment of the fee is due at least 45 days prior to such date. If any regulated company fails to pay the required fee by such date, the commission shall estimate the amount of fee due from such information as it may be able to obtain from any source and shall add 5 percent of such amount to the fee as a penalty if the failure is for not more than 30 days ... The commission shall collect the fee and penalty, plus interest and all costs of collection, from the regulated company.

In addition, Rule 25-4.0161(2), Florida Administrative Code, provides as follows:

Telecommunications companies that owed gross regulatory assessment fees of \$10,000 or more for the preceding calendar year shall pay the

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fee and remit the appropriate form twice a year. The regulatory assessment fee and appropriate form shall be filed no later than July 30 for the preceding period of January 1 through June 30 ....

See also, Section 364.336, Florida Statutes. Excel's regulatory assessment fee for the period January 1 through June 30, 1996, was \$16,888.58.

Staff recommends that Excel's request for waiver be dismissed. The Commission is not vested with the authority to waive fees or penalties and interest. In Order No. PSC-94-1464-FOF-WU, issued November 29, 1994, in Dockets Nos. 940973-WU and 940974-WU, this Commission said:

Pursuant to Section[] 350.113(4) ... and Rule 25-30.120(4), Florida Administrative Code, we are required to collect interest, penalties and collection costs from a delinquent regulatory company. Neither the Florida Statutes nor the Commission Rules provide us with discretion to waive fees, penalties and interest.

Rule 25-30.120, Florida Administrative Code, contains provisions governing the remittance of regulatory assessment fees by regulated water and wastewater utilities that are substantially the same as the provisions of Rule 25-4.0161(2), Florida Administrative Code.

The company should be directed to make payment of the assessed penalty (\$843) within 30 days of the Commission's order, with interest accruing to the date of payment.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. This docket should be closed upon receipt of the required payment.

**STAFF ANALYSIS:** This docket should be closed upon receipt of the required payment. Although the Commission's decision in Issue 1 is of the kind that would affect substantial interests, upon the filing of a protest to a proposed agency action order, by statute no relief would be available.