

State of Florida



Public Service Commission

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RECORDS AND REPORTING

DATE: NOVEMBER 18, 1999

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

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) *r JF*
DIVISION OF COMMUNICATIONS (BIEGALSKI, Isler) *Ⓟ*

RE: DOCKET NO. 981294-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 4606 ISSUED TO VERTEX ENTERPRIZE & INVESTMENT, INC., FOR VIOLATION OF RULE 25-4.0161, FLORIDA ADMINISTRATIVE CODE, REGULATORY ASSESSMENT FEES.

AGENDA: NOVEMBER 30, 1999 - REGULAR AGENDA - FINAL ACTION

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\981294r2.RCM

CASE BACKGROUND

On June 1, 1996, Order No. PSC-96-0641-FOF-TC was issued, granting Certificate No. 4606, to Vertex Enterprize & Investment, Inc., (Vertex). On October 8, 1998, the Commission opened this docket for nonpayment of 1997 RAFs. On October 15, 1998, Vertex paid a \$50 RAF, and \$5 toward the penalty. After experiencing great difficulty in contacting Vertex, staff eventually did make contact and, on December 8, 1998, Vertex paid the balance on the penalty and interest for 1997. On December 10, 1998, Vertex made a settlement offer of \$100. On February 19, 1999, the Commission issued Order No. PSC-99-0339-AS-TC, approving Vertex's settlement offer. Vertex did not remit the settlement amount, and made no further efforts to comply with the Order. On May 21, 1999, the Commission issued proposed agency action (PAA) Order No. PSC-99-1031-PAA-TC. The PAA Order canceled Vertex's pay telephone certificate or, in the alternative, required it to pay a \$30,500

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\$30,500 fine. On June 10, 1999, Vertex protested the PAA Order. There has not, however, been any further action by Vertex in pursuit of the Protest.

Vertex failed to appear at the November 15, 1999, prehearing conference and did not comply with any portion of the Order Establishing Procedure for this Docket, Order No. PSC-99-1581-PCO-TC, issued August 11, 1999.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission, on its own motion, dismiss Vertex's June 10, 1999, protest, and reinstate Order No. PSC-99-1031-PAA-TC as a Final Order?

RECOMMENDATION: Yes. Staff recommends that the Commission dismiss Vertex's June 10, 1999, protest and reinstate Order No. PSC-99-1031-PAA-TC as a final order, effective November 30, 1999, with the modification that Vertex no longer has five days to pay the \$30,500 fine in order to avoid cancellation of its certificate. Vertex has failed to pursue its protest and has refused to pay the settlement and fine amounts; therefore, its certificate should simply be canceled. All certificated local exchange companies should be instructed to discontinue service to Vertex, pursuant to Rule 25-24.510, Florida Administrative Code, Certificate of Public Convenience and Necessity Required.

The action recommended herein should in no way relieve Vertex of its obligation to pay 1999 regulatory assessment fees, which are not yet past due. If Vertex fails to pay 1999 regulatory assessment fees, the 1999 fees should be forwarded to the Office of the Comptroller for further collection efforts. If the Commission approves staff's recommendation, failure to pay 1999 fees should not result in additional punitive action by the Commission.

(Fordham)

STAFF ANALYSIS: In Order No. PSC-99-1031-PAA-TC, issued June 10, 1999, the Commission canceled Vertex's certificate No. 4606, pursuant to Rule 25-24.514(1)(b) and (c), Florida Administrative Code, unless Vertex paid fines totaling \$30,500. The fines were imposed for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for violation of Rule 25-24.520, Florida Administrative Code, Reporting Requirements, and Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and for failing to comply

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with Order No. PSC-99-0339-AS-TC. Vertex was ordered to comply with these requirements within five business days from the date Order No. PSC-99-1031-PAA-TC became final. The fines were to be remitted to the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.516, Florida Statutes. The Commission also indicated that when the appropriate fines were received, this docket would be closed.

In addition, the Commission explained that if Vertex failed to comply with Order No. 99-1031-PAA-TC within five business days from the date the Order became final, Vertex's certificate would be canceled and the docket would be closed. Furthermore, if the certificate were canceled, then all certificated local exchange companies were instructed to discontinue service to Vertex, pursuant to Rule 25-24.510, Florida Administrative Code, Certificate of Public Convenience and Necessity Required.

On June 10, 1999, Vertex protested Order No. PSC-99-1031-PAA-TC, thereby rendering the proposed agency action order a nullity. As stated in the Case Background, Vertex has, however, failed to pursue its protest to any degree. Vertex also failed to appear at the November 15, 1999, prehearing conference and did not comply with any portion of the Order Establishing Procedure for this Docket, Order No. PSC-99-1581-PCO-TC, issued August 11, 1999. Staff recommends, therefore, that the Commission dismiss Vertex's June 10, 1999, protest and reinstate Order No. PSC-99-1031-PAA-TC as a final order, effective November 30, 1999, with the modification that Vertex no longer has five days to pay the \$30,500 fine in order to avoid cancellation of his certificate. Vertex has failed to pursue its protest and has refused to pay the fine amount and its past due regulatory assessment fees; therefore, its certificate should simply be canceled. All past due regulatory assessment fees for Vertex, along with statutory penalties and interest charges, should be forwarded to the Office of the Comptroller for further collection efforts, and all certificated local exchange companies should be instructed to discontinue service to Vertex, pursuant to Rule 25-24.510, Florida Administrative Code, Certificate of Public Convenience and Necessity Required.

Furthermore, the action recommended herein should in no way relieve Vertex of its obligation to pay 1999 regulatory assessment fees, which are not yet past due. If Vertex fails to pay 1999 regulatory assessment fees, the 1999 fees should be forwarded to the Office of the Comptroller for further collection efforts. If the Commission approves staff's recommendation, failure to pay 1999 fees should not result in additional punitive action by the

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Commission. If the Commission cancels Vertex's certificate, further action would be unnecessarily redundant.

ISSUE 2: Should this Docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, no further action will be necessary. Therefore, this Docket may be closed. **(Fordham)**

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, no further action will be necessary. Therefore, this Docket may be closed.