

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** June 3, 2021

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Division of Economics (Kunkler, Galloway) *AK JGH*  
Office of the General Counsel (Murphy, Tan) *TLT*

**RE:** Docket No. 20210078-TX – Compliance investigation of local exchange Certificate No. 8511, issued to SH Services LLC, for apparent fourth-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

**AGENDA:** 06/15/21 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** Staff

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

SH Services LLC (SH Services or the Company) is a regulated telecommunications company located in Miami, Florida. The Company's application for a competitive local exchange telecommunications services certificate was approved by the Commission on August 11, 2004, by Order No. PSC-04-0787-PAA-TX. Pursuant to Section 364.336, Florida Statutes (F.S.), certificate holders must pay a minimum annual Regulatory Assessment Fee (RAF) if the certificate was active during any portion of the calendar year.

Pursuant to Section 350.113(4), F.S., RAF forms are mailed to regulated companies for the period January 1 through December 31, at least 45 days prior to the date that payment of the fee is due. Pursuant to Rule 25-4.0161(2), Florida Administrative Code (F.A.C.), the RAF form and applicable fees are due to the Commission by January 30 of the subsequent year.

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In keeping with Commission rules and statutes, 2020 RAF forms were mailed on December 9, 2020, for the period January 1, 2020 through December 31, 2020. The RAF form and applicable fees were due on or before January 30, 2020.

On February 22, 2021, the Commission mailed a letter to the Company informing it that, according to Commission records, its RAF payment had not yet been received, and was past due. The letter also informed the Company that payment would need to be postmarked within 15 calendar days of receipt of the notice, as evidenced by the certified mail receipt, and, if not received by that date, a RAF rule violation penalty of \$500, \$1,000, or \$2,000, is automatically imposed, depending on the number of previous dockets opened against the entity for violation of the RAF rule.

SH Services had three prior dockets opened for violation of Rule 25-4.0161, F.A.C. – Docket No. 20080469-TX, Docket No. 20090201-TX, and Docket No. 20100207-TX. Because this docket was opened for an apparent fourth violation by the Company of Rule 25-4.0161, F.A.C., staff is required to file a recommendation addressing the fourth violation for the Commission's consideration and further action.

On April 21, 2021, the Commission received a partial payment which included the RAF and associated delinquent RAF penalty and interest, along with a portion of the additional rule violation penalty, from SH Services. On May 20, 2021, the Commission received the remaining balance owed.

The Commission has jurisdiction over this matter pursuant to Sections 350.113, 364.336, and 364.285, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission impose a penalty and a cost of collection, together totaling \$4,000 or cancel the SH Services tariff and remove SH Services, TX797, from the register for an apparent fourth violation of Section 364.336, F.S., and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunication Companies?

**Recommendation:** The Commission should impose a penalty and the cost of collection, together totaling \$4,000, but should not cancel the SH Services tariff nor remove the Company's name from the register. (Kunkler)

**Staff Analysis:** The Commission has opened three prior dockets, in 2008, 2009, and 2010, to address the same rule violation by SH Services. In all three dockets, the Company's failure to pay past due RAFs by the delinquency notice deadlines resulted in the Company paying not only the delinquent RAFs, but also the statutory late payment penalties and interest amounts, and additional rule violation penalties per Rule 25-4.0161(12), F.A.C.

Due to the failure to timely pay the past due RAFs, SH Services consequently paid an additional rule violation penalty of \$500 to resolve Docket No. 20080469-TX, \$1,000 to resolve Docket No. 20090201-TX, and \$2,000 to resolve Docket No. 20100207-TX, along with all RAF amounts, statutory penalties, and interest charges. These actions resulted in the Company's certificate remaining active, which would have otherwise been cancelled administratively.

For a company's fourth-time failure to pay the RAF, Rule 25-4.0161(13), F.A.C., provides that staff shall file a recommendation for the Commission's consideration and further action. Pursuant to this rule, the Commission has authority, and also discretion, to either cancel the company's certificate, or waive the cancellation if a penalty, plus the outstanding RAF, including accrued statutory late payment charges, are paid in full. While the Company has had three prior violations of this Rule, the most recent violation for RAF non-compliance occurred over 11 years ago, in Docket No. 20100207-TX.

Rule 25-4.0161, F.A.C., does not specify a penalty amount for a fourth rule violation. As stated earlier, the rule prescribes a penalty of \$500, \$1,000, or \$2,000, depending on the number of previous violations (i.e. dockets opened due to a utility's failure to pay). Staff notes that the penalty amount per the rule doubles each time a subsequent RAF rule violation occurs up to three violations. Since this is the Company's fourth RAF rule violation, staff believes an appropriate penalty is \$4,000, which equates to a doubling of the \$2,000 penalty amount for a third RAF rule violation.<sup>1</sup> Most recently, this penalty amount was approved by the Commission,

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<sup>1</sup>Order No. PSC-08-0796-PAA-TI, issued December 3, 2008, in Docket No. 20080349-TI, *In re: Compliance investigation of IXC Registration No. TJ008, issued to Executive Business Centers, Inc., for apparent fourth-time violation of Section 364.336, F.S. and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.*

in Docket No. 20200141-TA.<sup>2</sup> Pursuant to Section 364.285, F.S., the Commission has authority to penalize up to \$25,000.

On April 21, 2021, the Commission received a partial RAF payment from SH Services in the amount of \$1,744. Staff reached out by phone to the Company on April 26, 2021, and by email on April 29, 2021 and May 11, 2021. On each occasion the Company was responsive and expressed its intent to pay the appropriate amount owed in an effort to keep the Certificate active. On May 3, 2021, the Commission received an additional partial payment in the amount of \$617.34, and on May 20, 2021, the Commission received the Company's remaining balance in the amount of \$2,000.<sup>3</sup>

Pursuant to Section 350.113(4), F.S., five percent of the 2020 RAF amount due is imposed as a penalty for each 30 days or fraction thereof during the time in which the failure continues, not to exceed a total penalty of 25 percent.<sup>4</sup> Additionally, an interest rate of 12 percent per annum is also applied to any delinquent amounts. Thus, at the time of the Company's April 21, 2021 payment, an estimated 2020 RAF amount of \$600, plus a late penalty in the amount of \$90 (5 percent x 3 months x \$600), plus accrued interest in the amount of \$18, resulted in a total amount due of \$708.<sup>5</sup> This amount, added to the staff-proposed fourth violation penalty amount of \$4,000, including cost of collections, resulted in a total amount due to the Commission of \$4,708. Staff notes that the amounts paid by SH Services in April and May 2021, as described above, in addition to the carryover credits from 2019 and 2020, equal \$4,708, leaving the Company with a zero balance under the assumption that a \$4,000 penalty in this case is appropriate.

Considering that the Company has paid the outstanding RAFs and penalties prior to staff filing this recommendation, and three times previously, as well as taking into account the extended amount of time elapsed since its last RAF rule violation, staff believes that SH Services' certificate should not be cancelled.

Therefore, staff recommends the Commission acknowledge the appropriate 2020 RAF, including accrued statutory late payment charges, along with the \$4,000 penalty, for a total amount due of \$4,708. Staff also recommends the Commission acknowledge that SH Services has paid this amount in full. Furthermore, staff recommends that the Company's tariff and registration should not be cancelled nor removed from the register.

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<sup>2</sup>Order No. PSC-2020-0203-PAA-TA, issued June 24, 2020, in Docket No. 20200141-TA, *In re: Compliance investigation of AAV Certificate No. 7790, issued to A.SUR Net, Inc., for apparent fourth-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.*

<sup>3</sup>SH Services had two credits that were applied to the 2020 RAF past due amount. The credits were \$215.41 for 2019 RAF overpayment, and \$131.25 for 2018 RAF overpayment, totaling \$346.66.

<sup>4</sup>Section 350.113(4), F.S., provides a prorated penalty amount for the first month of delinquency; however, this provision has no effect on this case since the delinquency period has been longer than one month.

<sup>5</sup>Staff notes that the 2019 RAF amount is based on the Company's 2018 annual revenues.

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

**Recommendation:** Staff recommends that the Order issued from this recommendation should become final and effective upon issuance of a Consummating Order. Thereupon, this docket should be closed administratively either upon acknowledgment that SH Services has paid in full the appropriate 2020 RAF, including accrued statutory late payment charges, along with the \$4,000 penalty, for a total amount due of \$4,708, or upon cancellation of the Company's local exchange certificate and removal of its name from the register. (Murphy)

**Staff Analysis:** Staff recommends that the Order issued from this recommendation should 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, F.A.C., within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), F.S., 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, F.S., hearing, the facts should be deemed admitted and the right to a hearing waived.

Staff recommends that the Commission take action as set forth in the foregoing staff recommendation statement.