

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida  
Public Service Commission of  
Interexchange Telecommunications  
Certificate No. 4751 issued to  
Capital Services of South  
Florida, Inc. for violation of  
Rule 25-4.0161, F.A.C.,  
Regulatory Assessment Fees;  
Telecommunications Companies.

DOCKET NO. 991546-TI  
ORDER NO. PSC-01-1158-PAA-TI  
ISSUED: May 21, 2001

The following Commissioners participated in the disposition of  
this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION ORDER  
CANCELING INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action discussed herein is preliminary in  
nature and will become final unless a person whose interests are  
substantially affected files a petition for a formal proceeding,  
pursuant to Rule 25-22.029, Florida Administrative Code.

On December 11, 1996, Capital Services of South Florida, Inc.  
("Capital" or "Company") was granted Florida Public Service  
Commission Certificate No. 4751. On its latest Regulatory  
Assessment Fee return filed with this Commission, the company  
reported no revenues for the period ended December 31, 1997. On  
December 10, 1998, the Division of Administration (DOA) mailed the  
Regulatory Assessment Fee (RAF) notice. Payment was due by  
February 1, 1999. The DOA mailed a delinquent notice for  
nonpayment of the 1998 RAF on March 17, 1999.

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On October 26, 1999, our staff received a letter from the company, which advised payment had been made on June 25, 1999. On November 19, 1999, our staff received another letter from the company. Again the company advised that payment for the 1998 RAF had been made.

Our staff wrote the company on November 23, 1999 and advised that Commission records showed no payment for the 1998 RAF had been received. Our staff requested a copy, front and back, of the company's cancelled check by December 7, 1999. No response was received. At the February 1, 2000 Agenda Conference, we voted to impose a \$500 fine or cancel the company's certificate. On February 2, 2001, we received a Notice of Bankruptcy (Chapter 11) for this company.

On February 22, 2000, our staff wrote a memo to the Commissioners advising that the Proposed Agency Action Order would not be issued since the company had filed for Chapter 11 Bankruptcy protection. On June 6, 2000, this docket was deferred from the June 6, 2000, Agenda Conference to allow our staff additional time to contact the Bankruptcy Trustee.

Our records showed that Capital Services had not paid the 1998, 1999, and 2000 RAFs nor the statutory penalty and interest charges owed for the late filing of its 1996, 1997, 1998, 1999, and 2000 RAFs. Rule 25-4.0161, Florida Administrative Code, requires the payment of RAFs by January 30, or the next business day, of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

On April 10, 2001, the Bankruptcy Trustee advised our staff that Capital Services' bankruptcy had converted to a Chapter 7 bankruptcy. As of April 11, 2001, the past due RAFs, plus statutory penalty and interest charges for the late filing of prior years' RAFs remain unpaid.

Chapter 7 of Section 109 of the Federal Bankruptcy Code provides for total liquidation of the business entity. The filing of a bankruptcy petition under Chapter 7 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Upon such filing, an interim Trustee in Bankruptcy is

immediately appointed who has the duty to collect and secure the non-exempt assets of the debtor and distribute them to creditors in the manner set forth in the Bankruptcy Code. Secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. Regulatory fees and penalties owed by a company to the Florida Public Service Commission are not secured debts and, as a practical matter, are uncollectible in a Chapter 7 proceeding.

This Commission is prevented by the automatic stay provision of the Bankruptcy Code from taking action against this company for its failure to pay regulatory assessment fees. In a Chapter 7 proceeding, however, the company ceases to exist and, accordingly, its certificate must be reclaimed. Furthermore, the DOA shall be notified that the past due RAFs should not be sent to the Comptroller's Office for collection.

Therefore, we find it appropriate to reconsider our vote from the February 1, 2000, Agenda Conference and hereby grant the company a bankruptcy cancellation of its Certificate No. 4751 with an effective date of February 2, 2000. In addition, we shall not forward the outstanding RAFs to the Comptroller's Office for collection, but our staff shall seek permission for us to write-off the uncollectible amount.

We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.337, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Capital Services of South Florida, Inc.'s Certificate No. 4751 to provide Interexchange Telecommunications services is hereby canceled, effective February 2, 2000. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the

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close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of May, 2001.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

FRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 11, 2001.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.