

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation
by Florida Public Service
Commission of Interexchange
Telecommunications Certificate
No. 5473 issued to American
MetroComm Long Distance
Corporation, effective 9/7/01.

DOCKET NO. 010733-TI
ORDER NO. PSC-01-2053-FOF-TI
ISSUED: October 18, 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

ORDER GRANTING CANCELLATION OF INTEREXCHANGE TELECOMMUNICATIONS
CERTIFICATE DUE TO CHAPTER 11 BANKRUPTCY

BY THE COMMISSION:

American MetroComm Long Distance Corporation (American MetroComm) currently holds Certificate of Public Convenience and Necessity No. 5473, issued by the Commission on December 5, 1997, authorizing the provision of Interexchange Telecommunications service. The Division of the Commission Clerk and Administrative Services advised our staff by memorandum that American MetroComm had not paid the 2000 Regulatory Assessment Fees (RAFs). Also, accrued statutory penalties and interest charges for late RAFs payments for the year 2000 had not been paid. American MetroComm was scheduled to remit its RAFs by January 30, 2001.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161 (2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. All entities that apply for certification

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receive a copy of our rules governing Interexchange Telecommunications service.

We received notice that this company had filed for Chapter 11 bankruptcy protection. In addition, we received letters from the company requesting cancellation of its certificate and asked that any unpaid RAFs be written off as no funds existed.

Chapter 11 of Section 109 of the Federal Bankruptcy Code provides for reorganization by business entities. The filing of a bankruptcy petition under Chapter 11 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Section 362(b)(5) provides that, for governments, the filing of the petition does not operate as a stay "of the enforcement of a judgment, other than a money judgment, obtained in an actual proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." (emphasis added) Thus, it would appear that we are not enjoined from exercising our police powers to protect public health, safety and welfare, but are enjoined from exercising our regulatory authority seeking to collect a debt. However, in this case, the company has requested cancellation of its certificate. Under those circumstances, this Commission is free to do so. We note that the Division of the Commission Clerk and Administrative Services will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write-off the uncollectible amount should be requested.

Accordingly, we find it appropriate to cancel Interexchange Telecommunications Certificate No. 5473, effective September 7, 2001. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.335, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that American MetroComm Long Distance Corporation's Certificate No. 5473 to provide Interexchange Telecommunications services is hereby canceled, effective September 7, 2001. It is further

ORDERED that the outstanding Regulatory Assessment Fees should not be sent to the Comptroller's Office for collection. The

Division of the Commission Clerk and Administrative Services, instead, shall request for permission to write-off the uncollectible amount. It is further

ORDERED that this Docket is closed.

By ORDER of the Florida Public Service Commission this 18th day of October, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk and
Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

KMP

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

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Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.