



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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DATE: DECEMBER 5, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji*
OFFICE OF THE GENERAL COUNSEL (TEITZMAN; MCKAY) *VSM* *HL*

RE: DOCKET NO. 021177-TP - BANKRUPTCY CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF IXC CERTIFICATE NO. 7086 AND ALEC CERTIFICATE NO. 7087 ISSUED TO ACTEL INTEGRATED COMMUNICATIONS, INC.

AGENDA: 12/17/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\021177.RCM

CASE BACKGROUND

- 08/03/99 - This company obtained Florida Public Service Commission Interexchange Carrier (IXC) Certificate No. 7086 and Alternative Local Exchange Carrier (ALEC) Certificate No. 7087 on August 6, 1999.
- 03/23/01 - The Commission received the company's payments for the 2000 Regulatory Assessment Fees (RAFs) and the company reported no revenues for either certificate for the period ended December 31, 2000.
- 05/25/01 - The Commission received notice that this company had filed for Chapter 11 bankruptcy protection (Case No. 01-12901).

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- **06/26/01** - The Commission received notice that the bankruptcy case was converted from a Chapter 11 to a Chapter 7 proceeding on June 14, 2001.
- **06/07/02** - The Division of the Commission Clerk & Administrative Services notified staff that the Commission had received returned mail addressed to this company.
- **07/25/02** - Staff wrote the Chapter 7 Bankruptcy Trustee and explained that mail had been returned and asked if the company still existed and if the Commission could cancel Actel Integrated Communications, Inc.'s IXC and ALEC certificates.
- **11/18/02** - As of this date, the Bankruptcy Trustee did not respond to staff's letter and the Commission continued to receive returned mail addressed to Actel Integrated Communications, Inc. Therefore, staff called the Chapter 7 Bankruptcy Trustee, Mr. Dwayne P. Smith, who advised that the Commission could cancel both of Actel Integrated Communications, Inc.'s certificates as the company was no longer in business.
- **12/03/02** - Actel Integrated Communications, Inc.'s IXC certificate has no outstanding consumer complaints and the ALEC certificate has one outstanding consumer complaint.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.337, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Actel Integrated Communications, Inc.'s request for cancellation of its IXC Certificate No. 7086 and ALEC Certificate No. 7087 due to bankruptcy?

RECOMMENDATION: Yes. The Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7086 and its ALEC Certificate No. 7087 with an effective date of November 18, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2001 and 2002 RAFs, including statutory penalty and interest charges for the years 2000 and 2001 for each certificate, 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. If the certificates are cancelled in accordance with the Commission's Order from this recommendation, Actel Integrated Communications, Inc. should be required to immediately cease and desist providing interexchange telecommunications and alternative local exchange services in Florida. (Isler; Teitzman; McKay)

STAFF ANALYSIS: Rules 25-24.474 and 25-24.820, Florida Administrative Code, establish the requirements for cancellation of IXC and ALEC certificates, respectively. Rule 25-4.0161, Florida Administrative Code, incorporated by Rules 25-24.480 and 25-24.835, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of Regulatory Assessment Fees by January 30 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 11, 2001, Actel Integrated Communications, Inc. filed for Chapter 11 bankruptcy protection, which was converted to a Chapter 7 bankruptcy proceeding on June 14, 2001. 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

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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.

The 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. Although the Commission does not typically grant a cancellation of a telecommunications certificate when there is an outstanding balance, a cancellation can be granted in this case, since the company requested cancellation of its certificate. However, it should be noted that the Division of the Commission Clerk & Administrative Services will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7086 and its ALEC Certificate No. 7087 with an effective date of November 18, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2001 and 2002 RAFs, including statutory penalty and interest charges for the years 2000 and 2001 for each certificate, 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. If the certificates are cancelled in accordance with the Commission's Order from this recommendation, Actel Integrated Communications, Inc. should be required to immediately cease and desist providing interexchange telecommunications and alternative local exchange services in Florida.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. The docket should then be closed. (Teitzman; McKay)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon issuance of a Consummating Order.