

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: March 4, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Baye)

FROM: Division of Competitive Markets & Enforcement (Isler) Pji
Office of the General Counsel (McKay; Banks) FRB ISM HCL

RE: Docket No. 040116-TI – Bankruptcy cancellation by Florida Public Service Commission of IXC Registration No. TJ452 issued to Touch America, Inc., effective 2/17/04.

Docket No. 040139-TI – Bankruptcy cancellation by Florida Public Service Commission of IXC Registration No. TI205 issued to Telecommunications Resources, Inc., effective 12/19/03.

AGENDA: 03/16/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040116.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission grant the companies cancellation of their respective tariff and removal from the register with effective dates as listed on Attachment A due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that any unpaid RAFs, including statutory penalty and interest charges, should not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts; and require the companies to immediately cease and desist providing intrastate interexchange telecommunications services in Florida?

Recommendation: Yes. (Isler; McKay; Banks)

DOCUMENT NUMBER-DATE

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Staff Analysis: 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 late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts. Section 364.02, Florida Statutes, establishes the requirements for requesting cancellation of a company's tariff or removal from the register.

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)(4) 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. 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 pre-petition debt. However, in this case, the companies listed on Attachment A have requested cancellations of their respective tariff and removals from the register. Under those circumstances, this Commission is free to do so.

The Commission received notice that each of the companies listed on Attachment A had filed for Chapter 11 bankruptcy protection. In addition, the Commission received letters from each of the companies, which advised that they had no customers and requested cancellation of their respective tariff and removal from the register and asked that any unpaid Regulatory Assessment Fees (RAFs) be written-off as no funds exist.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, 364.285, and 364.337, Florida Statutes.

Docket Nos. 040116-TI, 040139-TI
Date: March 4, 2004

Issue 2: Should these dockets be closed?

Recommendation: No. (McKay; Banks)

Staff Analysis: 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 dockets should then be closed upon issuance of a Consummating Order. A protest in one docket should not prevent the action in a separate docket from becoming final.

Docket Nos. 040116-TI, 040139-TI
Date: March 4, 2004

Attachment A

<u>Docket No.</u>	<u>Provider</u> <u>Last Reported Revenues/Period Covered</u>	<u>Registra.</u> <u>No.</u>	<u>Effective Date of</u> <u>Cancellation</u>
040116-TI	Touch America, Inc. \$153,375/2002	TJ452	01/31/04
	RAF years Requested to be Written-off 2003 and 2004		
	Years Penalty and Interest Requested to be Written-off 2002 and 2003		
040139-TI	Telecommunications Resources, Inc. \$2,376/2002	TI205	12/19/03
	RAF years Requested to be Written-off 2003 and 2004		
	Years Penalty and Interest Requested to be Written-off 2001, 2002, and 2003		