

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida  
Public Service Commission of  
Interexchange Telecommunications  
Certificate No.7219 issued to  
PointeCom, Incorporated for  
violation of Rule 25-4.0161,  
F.A.C., Regulatory Assessment  
Fees; Telecommunications  
Companies.

DOCKET NO. 001361-TI  
ORDER NO. PSC-01-1786-PAA-TI  
ISSUED: September 4, 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 VACATING ORDER NO. PSC-01-1154-AS-TI AND NOTICE  
PROPOSED AGENCY ACTION ORDER GRANTING BANKRUPTCY CANCELLATION OF  
INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action discussed herein regarding cancellation  
of IXC Certificate No. 7219 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 November 12, 1999, PointeCom, Incorporated (PointeCom) was  
granted Florida Public Service Commission Certificate No. 7219.  
The Division of the Commission Clerk & Administrative Services  
mailed the 1999 Regulatory Assessment Fee (RAF) return notice on  
December 8, 1999. Payment was due by January 31, 2000.

DOCUMENT NUMBER-DATE

10902 SEP-4 01

FPSC-COMMISSION CLERK

On February 29, 2000, the Division of the Commission Clerk & Administrative Services mailed the delinquent notice for nonpayment of the 1999 RAF. Our staff wrote the company and advised this docket had been established and to contact staff if it was interested in resolving the docket on October 27, 2000. On November 14, 2001, Mr. Chris Stockhoff, consultant for PointeCom contacted our staff and advised that the past due fees, including penalty and interest charges, would be paid and that the company would propose a settlement. The Division of the Commission Clerk & Administrative Services mailed the 2000 Regulatory Assessment Fee (RAF) return notice on December 12, 2000. Payment was due by January 30, 2001. We received the company's payment for the 1999 RAF, including penalty and interest charges on January 29, 2001. The company reported no revenues for the period ended December 31, 1999. In addition, the company's consultant proposed a settlement. We received the company's payment for the 2000 RAF, penalty, and interest on February 29, 2001. The company reported no revenues for the period ended December 31, 2000.

At the May 1, 2001 Agenda Conference, we approved the company's proposed settlement to resolve the 1999 RAF issue. On May 14, 2001, we received notice that the company had filed for Chapter 11 bankruptcy protection. Order No. PSC-01-1154-AS-TI, which approved the company's proposed settlement, was issued on May 21, 2001. On June 27, 2001, the Commission received a letter from the company requesting cancellation of its certificate and requesting that the RAFs be written off as uncollectible amounts.

Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of regulatory assessment fees 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.

As soon as our staff was made aware of the bankruptcy proceedings, the Consummating Order was not issued and this docket was put on monitor status.

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 or engage in other economic regulation.

Therefore, we find it appropriate to vacate Order No. PSC-01-1154-AS-TI, in which we approved the company's \$100 settlement, and hereby grant PointeCom a bankruptcy cancellation of its Certificate No. 7219 effective May 14, 2001. In addition, the Division of the Commission Clerk & Administrative Services shall not forward the 2001 RAF to the Comptroller's Office for collection, but our staff shall seek permission for us to write-off the uncollectible amount. If no timely protest to our decision to grant a bankruptcy cancellation is filed within 21 days of the date of issuance of the Order, this docket shall be closed upon issuance of a Consummating Order and upon cancellation of the certificate.

The Commission is 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 Order No. PSC-01-1154-AS-TI is hereby vacated. It is further

ORDERED that PointeCom Incorporated's Certificate No. 7219 to provide Interexchange Telecommunications services is hereby canceled effective May 14, 2001. It is further

ORDERED that the provisions of this Order granting a bankruptcy cancellation are issued as proposed agency action, and 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

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received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" 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 4th day of September, 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 )

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.

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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.

The action regarding cancellation of IXC Certificate No. 7219 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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 25, 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.