

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-01-2169-PAA-TI  
ISSUED: November 5, 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

REISSUANCE OF ORDER GRANTING CANCELLATION OF INTEREXCHANGE  
TELECOMMUNICATIONS CERTIFICATE DUE TO CHAPTER 11 BANKRUPTCY AS  
NOTICE OF PROPOSED AGENCY ACTION

BY THE COMMISSION:

This is a reissuance of Order No. PSC-01-2053-FOF-TI, issued  
October 18, 2001. Due to a clerical error, the Order was  
inadvertently issued as a Final Agency Action instead of as a  
Proposed Agency Action. Accordingly, the Order is being reissued  
in Docket No. 010733-TI, as a Proposed Agency Action, to provide  
adequate notice.

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.

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,

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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 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.

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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 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 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.

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By ORDER of the Florida Public Service Commission this 5th  
day of November, 2001.

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

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 26, 2001.

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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.