



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 1, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (PAYS)

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *Pji*
DIVISION OF LEGAL SERVICES (K. PEÑA; B. KEATING) *CK*

RE: DOCKET NO. 001421-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 5686 ISSUED TO WORLD TELECOMMUNICATIONS, INC. D/B/A WTI FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 03/13/01 - REGULAR AGENDA - FINAL ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001421.RCM

RECORDS AND REPORTING
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CASE BACKGROUND

- **09/15/98** - This company was granted Florida Public Service Commission Certificate No. 5686.
- **11/22/99** - The Commission received the company's payment for the 1998 Regulatory Assessment Fee (RAF), including statutory penalty and interest charges. The company reported no revenues for the period ended December 31, 1998.
- **12/08/99** - The Division of Administration mailed the 1999 RAF return notice. Payment was due by January 31, 2000.
- **02/29/00** - The Division of Administration mailed a delinquent notice for nonpayment of the 1999 RAF.

DOCUMENT NUMBER-DATE

02748 MAR-10

FPSC-RECORDS/REPORTING

- **04/07/00** - The Commission received notice that this company had filed for Chapter 7 Bankruptcy proceedings.
- **07/13/00** - The Commission received a letter from Mr. John C. Dent, Jr., Attorney. The letter stated that Mr. Dent no longer represented this company and asked that Mr. Dent be removed from any mailing lists associated with this company.
- **12/12/00** - The Division of Administration mailed the 2000 RAF return notice. Payment was due by January 30, 2001.
- **02/14/01** - As of this date, the 1999 RAF, plus statutory penalty and interest charges, have not been paid. In addition, the 2000 fee is now past due and has not been paid.

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 cancel World Telecommunications, Inc. d/b/a WTI's Certificate No. 5686?

RECOMMENDATION: Yes. This company filed for bankruptcy on May 4, 1999. Therefore, the Commission should grant the company a "bankruptcy cancellation" of its Certificate No. 5686, effective April 7, 2000. In addition, the Division of Administration 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. (Isler; K. Peña; B. Keating)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, 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. Commission records show that this company has

not paid its 1999 and 2000 RAFs, plus statutory penalty and interest charges.

On April 7, 2000, the Commission received a notice that advised the company had filed for protection under Chapter 7 of the Federal Bankruptcy Code on May 4, 1999. 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 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. In a Chapter 7 proceeding, however, the company ceases to exist and, accordingly, its certificate must be reclaimed. However, it should be noted that the Division of Administration will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection.

Accordingly, the Commission should grant the company a "bankruptcy cancellation" of its Certificate No. 5686, effective April 7, 2000. In addition, the Division of Administration 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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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission approves or modifies staff's recommendation on Issue 1, this docket should be closed upon cancellation of the certificate. If the Commission denies staff's recommendation on Issue 1, this docket should be closed administratively. (K. Peña; B. Keating)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or modified, the result will be a final order and this docket should be closed upon cancellation of the certificate. If the Commission denies staff's recommendation on Issue 1, this docket should be closed administratively.