

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-

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COMMUNICATIONS

**DATE:** APRIL 19, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF COMPETITIVE SERVICES (ISLER) *ISL* *100*  
DIVISION OF LEGAL SERVICES (BANKS) *PERB* *W*

**RE:** DOCKET NO. 991546-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 4751 ISSUED TO CAPITAL SERVICES OF SOUTH FLORIDA, INC. FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

**AGENDA:** 05/01/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\991546.RCM

### CASE BACKGROUND

- 12/11/96 - This company was granted Florida Public Service Commission Certificate No. 4751. On its latest Regulatory Assessment Fee return filed with the Commission, the company reported no revenues for the period ended December 31, 1997.
- 12/10/98 - The Division of Administration mailed the Regulatory Assessment Fee (RAF) notice. Payment was due by February 1, 1999.
- 03/17/99 - The Division of Administration mailed a delinquent notice for nonpayment of the 1998 RAF.

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PSC-RECORDS REPORTING

- **10/26/99** - Staff received a letter from the company, which advised payment had been made on June 25, 1999.
- **11/19/99** - Staff received another letter from the company. Again the company advised that payment for the 1998 RAF had been made.
- **11/23/99** - Staff wrote the company and advised that Commission records showed no payment for the 1998 RAF had been received. Staff requested a copy, front and back, of the company's cancelled check by December 7, 1999. No response was received.
- **02/01/00** - At the February 1, 2000 Agenda Conference, the Commission voted to impose a \$500 fine or cancel the company's certificate.
- **02/02/00** - The Commission received a Notice of Bankruptcy (Chapter 11) for this company.
- **02/22/00** - Staff wrote a memo to the Commissioners advising that the Proposed Agency Action Order would not be issued since the company had filed for Chapter 11 Bankruptcy protection.
- **06/06/00** - This docket was deferred from the June 6, 2000 Agenda Conference to allow staff additional time to contact the Bankruptcy Trustee.
- **04/10/01** - The Bankruptcy Trustee advised staff that the Chapter 11 bankruptcy had converted to a Chapter 7 bankruptcy.

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 reconsider its vote from the February 1, 2000 Agenda Conference on its own motion and grant Capital Services of South Florida, Inc. a bankruptcy cancellation of its Certificate No. 4751?

**RECOMMENDATION:** Yes. The company had filed for bankruptcy protection prior to the Commission's vote. Therefore, the Commission should reconsider its vote from the February 1, 2000 Agenda Conference, and grant the company a bankruptcy cancellation of its Certificate No. 4751 with an effective date of February 2, 2000. In addition, the Division of Administration should not forward the outstanding RAFs to the Comptroller's Office for collection, but that permission for the Commission to write-off the uncollectible amount should be requested. (Isler; Banks)

**STAFF ANALYSIS:** On February 1, 2000, the Commission approved staff's recommendation to fine Capital Services of South Florida, Inc. (Capital Services) \$500 or have its certificate cancelled for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. On February 2, 2000, the Commission received notice that Capital Services had filed for Chapter 11 bankruptcy protection on November 15, 1999. Therefore, an Order based on the Commission's vote was not issued.

Commission records show that Capital Services has not paid the 1998, 1999, and 2000 RAFs nor the statutory penalty and interest charges owed for the late filing of its 1996, 1997, 1998, 1999, and 2000 RAFs. Rule 25-4.0161, Florida Administrative Code, requires the payment of RAFs 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.

This docket was deferred from the June 6, 2000 Agenda Conference to allow staff additional time to review the bankruptcy issue and to contact the bankruptcy trustee. This recommendation contains additional detail supporting the cancellation of the certificate.

On April 10, 2001, the Bankruptcy Trustee advised staff that Capital Services' bankruptcy had converted to a Chapter 7 bankruptcy. As of April 11, 2001, the past due RAFs, plus

statutory penalty and interest charges for the late filing of prior years' RAFs remain unpaid.

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. Furthermore, the Division of Administration should be notified that the past due RAFs should not be sent to the Comptroller's Office for collection.

Therefore, staff believes the Commission should reconsider its vote from the February 1, 2000 Agenda Conference and grant the company a bankruptcy cancellation of its Certificate No. 4751 with an effective date of February 2, 2000. In addition, the Division of Administration should not forward the outstanding RAFs 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. The Order issued from this recommendation will become final upon issuance of the 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. If the Commission denies staff's recommendation on Issue 1, this docket should be closed administratively. (Banks)

**STAFF ANALYSIS:** Whether staff's recommendation on Issue 1 is approved or modified, the result will be a Proposed Agency Action Order and this docket should be closed upon cancellation of the certificate. The Order issued from this recommendation will become final upon the issuance of the 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. If the Commission denies staff's recommendation on Issue 1, this docket should be closed administratively.