

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida Public Service Commission of Interexchange Telecommunications Certificate No. 5696 issued to Twister Communications Network, Inc. for violation of Rules 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, and 25-24.480(2)(a) and (b), F.A.C., Records & Reports; Rules Incorporated.

DOCKET NO. 001313-TI
ORDER NO. PSC-01-1009-PAA-TI
ISSUED: April 24, 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

NOTICE OF PROPOSED AGENCY ACTION
ORDER CANCELING INTEREXCHANGE
TELECOMMUNICATIONS CERTIFICATE

BY THE COMMISSION:

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.

On October 13, 1998, Twister Communications Network, Inc. (Twister) was granted Interexchange Telecommunications (IXC) Certificate of Public Convenience and Necessity No. 5696. On December 8, 1999, our Division of Administration (DOA) mailed the Regulatory Assessment Fee (RAF) notice. Payment was due by January 31, 2000. Our DOA mailed a delinquent letter to Twister on

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February 29, 2000. On September 6, 2000, this Commission received notice that Twister had filed for Chapter 7 bankruptcy on May 23, 2000.

As of March 19, 2001, the 1999 RAF, plus statutory penalty and interest charges, had not been paid. In addition, the 2000 RAF Fee is now past due and has not been paid. We note that this Commission was never formally served notice of bankruptcy proceedings for Twister.

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.

This Commission is prevented by the automatic stay provision of the Bankruptcy Code from taking action against Twister for its failure to pay Regulatory Assessment Fees. Although this Commission does not typically grant a cancellation of a telecommunications certificate when there is an outstanding balance, a cancellation should be granted in this case, since Twister filed for protection under Chapter 7 of the Bankruptcy Code.

Accordingly, we believe that a "bankruptcy cancellation" of Twister's Certificate No. 5696 is appropriate, with an effective date of September 6, 2000. In addition, the DOA will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that permission for this Commission to write-off the uncollectible amount will be requested.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Twister Communications Network, Inc.'s Certificate No. 5696 to provide Interexchange Telecommunications services is hereby canceled, effective September 6, 2000. 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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" 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 24th day of April, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 15, 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.