



Public Service Commission

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RECORDS AND REPORTING
010368 TX 01 30

DATE: MAY 3, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *IS*
DIVISION OF LEGAL SERVICES (ELLIOTT) *DAE*

RE: DOCKET NO. 010368-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 5641 ISSUED TO NORTHPOINT COMMUNICATIONS, INC. FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 05/15/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010368.RCM

CASE BACKGROUND

- **06/13/98** - NorthPoint Communications, Inc. (NorthPoint) obtained Florida Public Service Commission Certificate No. 5641.
- **03/09/00** - The Commission received the company's payment for the 1999 Regulatory Assessment Fee (RAF), which included all except \$1.00 of the statutory penalty and interest charges. The company reported no revenues for the period ended December 31, 1999.
- **12/12/00** - The Division of Administration mailed the 2000 RAF return notice. Payment was due by January 30, 2001.

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- **02/21/01** - The Division of Administration mailed a delinquent notice for nonpayment of the 2000 RAF.
- **03/26/01** - The Commission received a letter from Mr. Michael E. Olsen, Vice President and Deputy General Counsel, which advised that the company had filed for Chapter 11 bankruptcy protection and requested that its certificate be cancelled.

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 grant NorthPoint Communications, Inc.'s request for cancellation of its Certificate No. 5641?

RECOMMENDATION: Yes. The Commission should grant the company a bankruptcy cancellation of its Certificate No. 5641 with an effective date of March 26, 2001. 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; Elliott)

STAFF ANALYSIS: Rule 25-24.820, Florida Administrative Code, establishes the requirements for cancellation of a certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of regulatory assessment fees by January 30 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.

On March 26, 2001, the Commission received a letter from Mr. Michael E. Olsen, the company's Vice President and Deputy General Counsel. Mr. Olsen stated that it is requesting cancellation of its Alternative Local Exchange Carrier (ALEC) Certificate No. 5641 due to the Chapter 11 bankruptcy. The letter stated, in pertinent part:

We have run completely out of cash and have no other source of funding or credit available. Unable to pay our vendors and without funds to operate our network, we have no choice but to discontinue our services.

Mr. Olsen stated that it has no retail customers, instead its only customers were businesses that resold NorthPoint's DSL services. Mr. Olsen stated that "within minutes" of the US Bankruptcy Court's order that NorthPoint's assets be sold to pay its creditors, NorthPoint began notifying its customers that the service was being terminated and provided the customers with information concerning alternative service providers.

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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. However, in this case, the Company has requested cancellation of its certificate. Under those circumstances, this Commission is free to do so.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its Certificate No. 5641 with an effective date of March 26, 2001. 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. The Order issued from this recommendation will become final upon issuance of a 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. The docket should then be closed. (Elliott)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon issuance of a Consummating Order.