



Public Service Commission

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COMMISSION CLERK

DATE: AUGUST 2, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *PIV* *MA*
DIVISION OF LEGAL SERVICES (BANKS) *POB* *LL*

RE: DOCKET NO. 001361-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO.7219 ISSUED TO POINTECOM, INCORPORATED FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 08/14/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001361.RCM

CASE BACKGROUND

- **11/12/99** - PointeCom, Incorporated was granted Florida Public Service Commission Certificate No. 7219.
- **12/08/99** - The Division of the Commission Clerk & Administrative Services mailed the 1999 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 31, 2000.
- **02/29/00** - The Division of the Commission Clerk & Administrative Services mailed the delinquent notice for payment of the 1999 RAF.

DOCUMENT NUMBER-DATE

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- **10/27/00** - Staff wrote the company and advised this docket had been established and to contact staff if it was interested in resolving the docket.
- **11/14/00** - Mr. Chris Stockhoff, consultant for PointeCom, Incorporated, contacted staff and advised that the past due fees, including penalty and interest charges, would be paid and that the company would propose a settlement.
- **12/12/00** - The Division of the Commission Clerk & Administrative Services mailed the 2000 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 30, 2001.
- **01/29/01** - The Commission received the company's payment for the 1999 RAF, including penalty and interest charges. The company reported no revenues for the period ended December 31, 1999. In addition, the company's consultant proposed a settlement.
- **02/19/01** - The Commission received the company's payment for the 2000 RAF, penalty, and interest. The company reported no revenues for the period ended December 31, 2000.
- **05/01/01** - At the May 1, 2001 Agenda Conference, the Commission approved the company's proposed settlement to resolve the 1999 RAF issue.
- **05/14/01** - The Commission received notice that the company had filed for Chapter 11 bankruptcy protection.
- **05/21/01** - Order No. PSC-01-1154-AS-TI was issued, which accepted the company's proposed settlement.
- **06/27/01** - The Commission received a letter from the company requesting cancellation of its certificate and requesting that the RAFs be written off.

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 vacate Order No. PSC-01-1154-AS-TI and grant cancellation of PointeCom Incorporated's Certificate No. 7219?

RECOMMENDATION: Yes. The company had filed for bankruptcy protection prior to the issuance of the Order accepting PointeCom, Incorporated's settlement offer. Therefore, the Commission should vacate Order No. PSC-01-1154-AS-TI and grant PointeCom Incorporated a bankruptcy cancellation effective May 14, 2001. In addition, the Division of the Commission Clerk & Administrative Services should not forward the 2001 RAF to the Comptroller's Office for collection. (Isler; Banks)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, 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.

This docket was established for nonpayment of the 1999 RAF, plus statutory penalty and interest charges. The Commission received notice that PointeCom, Incorporated had filed for Chapter 11 bankruptcy protection after the Commission vote on May 1, 2001 but prior to Order No. PSC-01-1154-AS-TI being issued on May 21, 2001. As soon as staff was made aware of the bankruptcy proceedings, the Consummating Order was not issued and this docket was put on monitor status.

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.

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Therefore, staff believes the Commission should vacate Order No. PSC-01-1154-AS-TI, in which the Commission accepted the company's \$100 settlement and grant PointeCom Incorporated a bankruptcy cancellation effective May 14, 2001. In addition, the Division of the Commission Clerk & Administrative Services should not forward the 2001 RAF to the Comptroller's Office for collection.

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 upon cancellation of the certificate. (Banks)

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 and upon cancellation of the certificate.