



Public Service Commission

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COMMISSION
CLERK

SEP 20 AM 9:09

RECEIVED FPSC

DATE: SEPTEMBER 20, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *Pji*
DIVISION OF LEGAL SERVICES (ELLIOTT) *DPE*

RE: DOCKET NO. 010970-TP - BANKRUPTCY CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 7344 AND INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 7508 ISSUED TO BROADBAND OFFICE COMMUNICATIONS, INC., EFFECTIVE 5/9/01.

AGENDA: 10/02/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010970.RCM

CASE BACKGROUND

- 03/02/00 - BroadBand Office Communications, Inc. obtained Florida Public Service Commission ALEC Certificate No. 7344.
- 07/18/00 - BroadBand Office Communications, Inc. obtained Florida Public Service Commission IXC Certificate No. 7508.
- 01/31/01 - The Commission received the company's payment for the 2000 Regulatory Assessment Fee (RAF) for both certificates. The company reported no revenues for the period ended December 31, 2000 on both certificates.
- 06/14/01 - The Commission received notice that this company had filed for Chapter 11 bankruptcy protection on May 9, 2001.

DOCUMENT NUMBER-DATE

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- **07/16/01** - The Commission received a letter from the company's attorney, Coudert Brothers, dated July 13, 2001 requesting cancellation of BroadBand Office Communications, Inc.'s ALEC certificate due to the bankruptcy proceedings.
- **07/30/01** - Staff called the company's attorney, Elizabeth Holowinski, to confirm that only the ALEC certificate was to be cancelled. Ms. Holowinski stated that both the ALEC and IXC certificates should be cancelled and stated that she would amend her previous letter.
- **08/01/01** - The Commission received a letter from Coudert Brothers requesting cancellation of BroadBand Office Communications, Inc.'s ALEC and IXC certificates.

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 BroadBand Office Communications, Inc.'s request for cancellation of its IXC Certificate No. 7508 and ALEC Certificate No. 7344?

RECOMMENDATION: Yes. The Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7508 and ALEC Certificate No. 7344 with an effective date of May 9, 2001. In addition, the Division of Administration will be notified that the 2001 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: Rules 25-24.474 and 25-24.820, Florida Administrative Code, establishes the requirements for cancellation of IXC and ALEC certificates, respectively. The rules provide 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 June 14, 2001, the Commission received notice that BroadBand Office Communications, Inc. had filed for Chapter 11 bankruptcy protection on May 9, 2001. On July 16, 2001, the Commission received a letter dated July 13, 2001 from Ms. Tara K. Giunta and Elizabeth Holowinski, Counsel for the company, which requested cancellation of BroadBand Office Communications, Inc.'s ALEC certificate due to the bankruptcy proceedings.

On July 30, 2001, staff called Ms. Holowinski, and explained that the company had an IXC certificate in addition to its ALEC certificate. Staff asked if the company wanted only the ALEC certificate or both certificates cancelled. Ms. Holowinski advised that both certificates should be cancelled.

On August 1, 2001, staff received a letter from Coudert Brothers confirming that both the IXC and ALEC certificates should be cancelled. In addition, the letter stated that BroadBand Office

Communications, Inc. does not have the financial resources to pay the regulatory assessment fees for the year 2001 and requested that the Commission waive the fees.

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 certificates. Under those circumstances, this Commission is free to do so.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7508 and ALEC Certificate No. 7344 with an effective date of May 9, 2001. In addition, the Division of Administration will be notified that the 2001 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.