



Public Service Commission
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COMMISSION CLERK

DATE: SEPTEMBER 20, 2001
TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYÓ)
FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *PIF*
DIVISION OF LEGAL SERVICES (ELLIOTT) *JAK*
RE: DOCKET NO. 010765-TP - BANKRUPTCY CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF IXC CERTIFICATE NO. 7203 AND ALEC CERTIFICATE NO. 7204 ISSUED TO @LINK NETWORKS, INC., EFFECTIVE 5/8/01.
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\010765.RCM

CASE BACKGROUND

- 11/12/99 - @link Networks, Inc. obtained Florida Public Service Commission IXC Certificate No. 7203 and ALEC Certificate No. 7204.
- 01/09/01 - 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.
- 05/08/01 - The Commission received notice that this company had filed for Chapter 11 bankruptcy protection.
- 05/14/01 - The Commission received a letter from the company which advised that upon filing for bankruptcy, @link Networks, Inc. began notifying its customers that service would be

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discontinued and provided the customers with information concerning other providers.

- **05/15/01** - The Commission received a letter from the company which stated that it was unable to obtain additional financing and requested that its certificates be cancelled.
- **05/21/01** - The Commission received notice from the company's attorneys, which advised @link Networks, Inc. had no cash and stated that it had ceased providing service.

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 @link Networks, Inc.'s request for cancellation of its IXC Certificate No. 7203 and ALEC Certificate No. 7204?

RECOMMENDATION: Yes. The Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7203 and ALEC Certificate No. 7204 with an effective date of May 8, 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 May 8, 2001, the Commission received notice that @link Networks, Inc. had filed for Chapter 11 bankruptcy protection on April 25, 2001. On May 14, 2001, the Commission received a letter dated May 7, 2001 from Mr. Alexander Good, Chairman and CEO, which requested permission to maintain its operating authority although it had begun notifying its customers that service would be discontinued. Mr. Good stated that the notice to customers provided information on other telecommunications providers.

On May 15, 2001, the Commission received a letter dated May 9, 2001 from Mr. Good, which stated that @link Networks, Inc. had been unable to obtain additional financing and that under the circumstances, it had ceased doing business and that the company's assets would be liquidated. Mr. Good requested that the Commission terminate any operating authority previously granted.

On May 21, 2001, the Commission received notice from @link Networks, Inc.'s attorneys, O'Neil, Cannon & Hollman, which stated that the company has no cash or assets, that it had ceased operations, therefore, the certificates should be cancelled.

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. 7203 and ALEC Certificate No. 7204 with an effective date of May 8, 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.