



Public Service Commission
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DATE: SEPTEMBER 20, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *Pixi*
DIVISION OF LEGAL SERVICES (K. PEÑA; B. KEATING) *AD*
TK *KMP*

RE: DOCKET NO. 010912-TI - BANKRUPTCY CANCELLATION BY THE
FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE
TELECOMMUNICATIONS CERTIFICATE NO. 5208 ISSUED TO VOCALL
COMMUNICATIONS CORP., EFFECTIVE 7/23/01.

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\010912.RCM

CASE BACKGROUND

- 09/03/97 - VoCall Communications Corp. obtained Florida Public Service Commission IXC Certificate No. 5208.
- 04/21/00 - The Commission received the company's payment for the 1999 Regulatory Assessment Fee (RAF). The company reported revenues in the amount of \$93,224.91 for the period ended December 31, 1999.
- 12/12/00 - The Division of the Commission Clerk & Administrative Services mailed the 2000 RAF return form. Payment was due by January 30, 2001.
- 02/21/01 - The Division of the Commission Clerk & Administrative Services mailed a delinquent notice.

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- **07/23/01** - The Commission received a letter from the company requesting cancellation of its certificate and attaching a copy of its withdrawal of its authority as a corporation in the state.
- **08/14/01** - Staff wrote the company and explained that a voluntary cancellation could not be recommended with a RAF balance. Staff also explained that the company was required to comply with Rule 25-24.474, Florida Administrative Code, when requesting cancellation.
- **08/27/01** - The Commission received notice that VoCall Communications Corp. had filed for Chapter 11 bankruptcy protection.

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 VoCall Communications Corp.'s request for cancellation of its IXC Certificate No. 5208?

RECOMMENDATION: Yes. The Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 5208 with an effective date of July 23, 2001. In addition, the Division of Administration will be notified that the outstanding 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; K. Peña; B. Keating)

STAFF ANALYSIS: Rules 25-24.474, 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 July 23, 2001, the Commission received a letter dated July 19, 2001 from the company which requested cancellation of its certificate. The letter included a copy of the Secretary of State's certification dated January 19, 2001, which withdrew VoCall Communications Corp.'s authority as a corporation in Florida.

On August 14, 2001, staff wrote the company and explained that before a voluntary cancellation could be granted, it needed to pay the 2000 RAF, including statutory penalty and interest charges, and either pay the 2001 RAF or provide a date certain it would be paid. On August 27, 2001, the Commission received notice that VoCall Communications Corp. had filed for Chapter 11 bankruptcy protection. The notice stated that the company had originally filed for Chapter 7 on September 19, 2000, but that the case had been converted to Chapter 11 on February 26, 2001.

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

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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 IXC Certificate No. 5208 with an effective date of July 23, 2001. In addition, the Division of Administration will be notified that the outstanding 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.

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. (K. Peña; B. Keating)

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.