



SCANNED

-M-E-M-O-R-A-N-D-U-M-

DATE: OCTOBER 4, 2001
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)
FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *Di* *AD* *mp*
DIVISION OF LEGAL SERVICES (K. PEÑA; B. KEATING; ELLIOTT) *JAE* *KMP*
RE: DOCKET NO. 010733-TI - BANKRUPTCY CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 5473 ISSUED TO AMERICAN METROCOMM LONG DISTANCE CORPORATION, EFFECTIVE 9/7/01.

DOCKET NO. 010994-TI - BANKRUPTCY CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 4813 ISSUED TO RSL COM PRIMECALL, INC., EFFECTIVE 5/10/01.

DOCKET NO. 011001-TI - BANKRUPTCY CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 4726 ISSUED TO VIATEL SERVICES, INC., EFFECTIVE 5/14/01.

AGENDA: 10/16/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010733.RCM

CASE BACKGROUND

The companies listed on Attachment A have requested cancellation of their respective certificates and provided notice of Chapter 11 bankruptcy proceedings.

DOCUMENT NUMBER-DATE

12565 OCT-30

FPSC-COMMISSION CLERK

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 the companies listed on Attachment A a cancellation of their respective certificates?

RECOMMENDATION: Yes. The Commission should grant each company listed on Attachment A a bankruptcy cancellation of their respective certificates with an effective date as listed on Attachment A. In addition, the Division of the Commission Clerk & Administrative Services 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; K. Peña; B. Keating; Elliott)

STAFF ANALYSIS: Rule 25-24.474, Florida Administrative Code, establishes the requirements for cancellation of Interexchange Carrier certificates. 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.

The Commission received notice that each of the companies listed on Attachment A had filed for Chapter 11 bankruptcy protection. In addition, the Commission received letters from each of the companies, which requested cancellation of their respective certificates and asked that any unpaid Regulatory Assessment Fees (RAFs) be written off as no funds existed.

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 companies listed on Attachment A have requested cancellation of their respective certificates. Under those circumstances, this Commission is free to do so.

Accordingly, staff believes the Commission should grant each company listed on Attachment A a bankruptcy cancellation of their respective certificates with an effective date as listed on Attachment A. In addition, the Division of the Commission Clerk & Administrative Services 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.

DOCKET NOS. 010733-T1, 010994-T1, 011001-T1
DATE: OCTOBER 4, 2001

ISSUE 2: Should these dockets 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 dockets should then be closed upon cancellation of the certificates. A protest in one docket should not prevent the action in a separate docket from becoming final. (K. Peña; B. Keating; 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, these dockets should be closed upon cancellation of the certificates. A protest in one docket should not prevent the action in a separate docket from becoming final.

DOCKET NOS. 010733-T1, 010994-T1, 011001-T1
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ATTACHMENT A

<u>DOCKET NO.</u>	<u>PROVIDER LAST REPORTED REVENUES & PERIOD COVERED</u>	<u>CERT. NO.</u>	<u>Effective Date of Cancellation</u>
010733-T1	American MetroComm Long Distance Corp. \$0 Revenues for Period Ended 12/31/99	5473	09/07/01
010994-T1	RSL COM PrimeCall, Inc \$263,575 Revenues for Period Ended 12/31/00	4813	05/10/01
011001-T1	Viatel Services, Inc. \$1,773,104.84 Revenues for Period Ended 12/31/00	4726	05/14/01