



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: NOVEMBER 7, 2001
TO: DIRECTOR, DIVISION OF THE COMMISSION
ADMINISTRATIVE SERVICES (BAYÓ)
FROM: DIVISION OF COMPETITIVE SERVICES (ISLER)
DIVISION OF LEGAL SERVICES (J. ELLIOTT)
RE: DOCKET NO. 011133-TX - BANKRUPTCY CANCELLATION BY FLORIDA
PUBLIC SERVICE COMMISSION OF ALTERNATIVE LOCAL EXCHANGE
TELECOMMUNICATIONS CERTIFICATE NO. 5333 ISSUED TO AMERICAN
METROUTILITIES CORPORATION/FLORIDA, EFFECTIVE 9/7/01.
AGENDA: 11/19/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\CMP\WP\011133.RCM

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COMMISSION
CLERK

CASE BACKGROUND

- 03/10/98 - American MetroUtilities Corporation/Florida obtained Florida Public Service Commission ALEC Certificate No. 5333.
03/29/00 - The Commission received the company's payment for the 1999 Regulatory Assessment Fee (RAF). The company reported no revenues for the period ended December 31, 1999.
12/12/00 - The Division of the Commission Clerk & Administrative Services mailed the 2000 RAF return notice. Payment was due by January 30, 2001.
02/21/01 - The Division of the Commission Clerk & Administrative Services mailed the delinquent notice.

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- 08/21/01 - This docket was established for nonpayment of the 2000 RAF, plus statutory penalty and interest charges for the years 1999 and 2000.
- 09/07/01 - The Commission received notice that this company had filed for Chapter 11 bankruptcy protection. In addition, the company advised it was not providing service and requested cancellation of its certificate.
- 10/24/01 - As of this date, the company has not paid the past due amount.

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 American MetroUtilities Corporation/Florida's request for cancellation of its ALEC Certificate No. 5333?

RECOMMENDATION: Yes. The Commission should grant the company a bankruptcy cancellation of its ALEC Certificate No. 5333 with an effective date of September 7, 2001. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2000 and 2001 RAFs, plus statutory penalty and interest charges, 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: Rule 25-24.820, Florida Administrative Code, establishes the requirement 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 September 7, 2001, the Commission received notice that American MetroUtilities Corporation/Florida had filed for Chapter 11 bankruptcy protection. In addition, the Commission received a letter, which stated that the company was not providing service and requested cancellation of its certificate.

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

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enjoined from exercising our regulatory authority seeking to collect a debt. 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 ALEC Certificate No. 5333 with an effective date of September 7, 2001. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2000 and 2001 RAFs, plus statutory penalty and interest charges, 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.
(J. 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.