

State of Florida



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

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31 NOV 19 AM 10:06
COMMISSION CLERK

DATE: NOVEMBER 19, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *Pij*
DIVISION OF LEGAL SERVICES (K. PEÑA; B. KEATING) *vmf*

RE: DOCKET NO. 011040-TP - BANKRUPTCY CANCELLATION BY FLORIDA
PUBLIC SERVICE COMMISSION OF INTEREXCHANGE
TELECOMMUNICATIONS CERTIFICATE NO. 7190 AND ALTERNATIVE
LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 7189
ISSUED TO PICUS COMMUNICATIONS, LLC, EFFECTIVE 10/12/01.

AGENDA: 12/04/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\011040.RCM

CASE BACKGROUND

- 11/12/99 - PICUS Communications, LLC obtained Florida Public Service Commission Interexchange Carrier (IXC) Certificate No. 7190 and Alternative Local Exchange Carrier (ALEC) Certificate No. 7189.
- 01/31/01 - The Commission received the company's payment for the 1999 Regulatory Assessment Fee (RAF) for both certificates. The company reported no revenues for the period ended December 31, 1999 on both certificates.
- 08/16/01 - Staff wrote the company and advised that this docket had been established for nonpayment of the 2000 RAF and to contact staff if it was interested in resolving the docket.

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- 08/27/01 - The Commission received notice that this company had filed for Chapter 11 bankruptcy protection.
- 10/12/01 - The Commission received a letter from the company which requested cancellation of its certificates due to the bankruptcy proceedings and "subsequent cessation of business."

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 PICUS Communications, LLC's request for cancellation of its IXC Certificate No. 7190 and ALEC Certificate No. 7189 due to bankruptcy?

RECOMMENDATION: Yes. The Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7190 and ALEC Certificate No. 7189 with an effective date of October 12, 2001. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2000 and 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)

STAFF ANALYSIS: Rules 25-24.474 and 25-24.820, Florida Administrative Code, establishes the requirements for cancellation of IXC and ALEC certificates, respectively. However, 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. However, in this case, the Company has requested cancellation of its certificates. Under those circumstances, this Commission is free to do so.

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.

After this docket was established and staff had written the company, on August 27, 2001, the Commission received notice that PICUS Communications, LLC had filed for Chapter 11 bankruptcy

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protection. On October 12, 2001, the Commission received a letter from the company which requested cancellation of its IXC and ALEC certificates and which advised that the company was no longer providing service.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7190 and ALEC Certificate No. 7189 with an effective date of October 12, 2001. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2000 and 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: 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.