

State of Florida



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-

RECEIVED-FPSC
MAR 21 AM 8:52
COMMISSION
CLERK

DATE: MARCH 21, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Aji PD*
OFFICE OF THE GENERAL COUNSEL (DODSON; J. ELLIOTT; K.
PEÑA; B. KEATING) *dk Vmp JAD JAE*

RE: BANKRUPTCY CANCELLATION BY THE FLORIDA PUBLIC SERVICE
COMMISSION OF IXC CERTIFICATE AND ALEC CERTIFICATE

- DOCKET NO. 020048-TP - NET2000 COMMUNICATIONS SERVICES, INC.
- DOCKET NO. 020083-TP - BROADSTREAM CORPORATION
- DOCKET NO. 020224-TP - CONVERGENT COMMUNICATIONS SERVICES, INC.

AGENDA: 04/02/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020048.RCM

CASE BACKGROUND

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

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.

DOCUMENT NUMBER-DATE

03249 MAR 21 02

FPSC-COMMISSION CLERK

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant the companies listed on Attachment A a cancellation of their respective certificates due to bankruptcy?

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 unpaid RAFs, including 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. If the certificates for each company as listed on Attachment A are cancelled in accordance with the Commission's Order from this recommendation, the respective companies should be required to immediately cease and desist providing IXC and ALEC telecommunications services in Florida. (Isler; Dodson; J. Elliott; K. Peña; B. Keating)

STAFF ANALYSIS: Rules 25-24.474 and 25-24.820, Florida Administrative Code, establish the requirements for cancellation of Interexchange Carrier (IXC) and Alternative Local Exchange (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 companies listed on Attachment A have requested cancellation of their respective 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

DOCKET NOS. 020048-TP, 020083-TP, 020224-TP
DATE: MARCH 21, 2002

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 exist.

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 unpaid RAFs, including 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. If the certificates for each company as listed on Attachment A are cancelled in accordance with the Commission's Order from this recommendation, the respective companies should be required to immediately cease and desist providing IXC and ALEC telecommunications services in Florida.

DOCKET NOS. 020048-TP, 020083-TP, 020224-TP
DATE: MARCH 21, 2002

ISSUE 2: Should these dockets 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 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. (Dodson; J. Elliott; 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, these dockets should be closed upon issuance of a Consummating Order. A protest in one docket should not prevent the action in a separate docket from becoming final.

DOCKET NOS. 020048-TP, 020083-TP, 020224-TP
 DATE: MARCH 21, 2002

<u>DOCKET NO.</u>	<u>PROVIDER LAST REPORTED REVENUES & PERIOD COVERED</u>	<u>CERT. NO.</u>	<u>EFFECTIVE DATE OF CANCELLATION</u>
020048-TP	Net2000 Communications Services, Inc.	5611 (IXC) 7528 (ALEC)	01/15/02 01/15/02
	\$116,321.90 IXC Revenues for Period Ended 12/31/00 \$3,401.40 ALEC Revenues for Period Ended 12/31/00 RAF Years Requested to be Written-Off 2001 and 2002 for both IXC and ALEC certificates Penalty and Interest Requested to be Written-Off 2001 for IXC certificate 2000 and 2001 for ALEC certificate		
020083-TP	BroadStream Corporation	7088 (IXC) 7089 (ALEC)	12/31/01 12/31/01
	\$0 IXC Revenues for Period Ended 12/31/99 \$0 ALEC Revenues for Period Ended 12/31/99 RAF Years Requested to be Written-Off 2000 and 2001 for both IXC and ALEC certificates Penalty and Interest Requested to be Written-Off 1999 and 2000 for both IXC and ALEC certificates		
020224-TP	Convergent Communications Services, Inc.	5723 (IXC) 7266 (ALEC)	03/12/02 03/12/02
	\$29,047.42 IXC Revenues for Period Ended 12/31/00 \$0 ALEC Revenues for Period Ended 12/31/00 RAF Years Requested to be Written-Off 2001 and 2002 for both IXC and ALEC certificates Penalty and Interest Requested to be Written-Off 2001 for both IXC and ALEC certificates		