

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-

COMMISSION  
CLERK

RECEIVED - FPSC  
JUN - 5 AM 8:19

DATE: JUNE 6, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji*  
OFFICE OF THE GENERAL COUNSEL (DODSON) *PHD* *DL* *DL*

RE: DOCKET NO. 020444-TI - BANKRUPTCY CANCELLATION BY FLORIDA  
PUBLIC SERVICE COMMISSION OF IXC CERTIFICATE NO. 7824  
ISSUED TO NOVO NETWORKS METRO SERVICES, INC., EFFECTIVE  
5/14/02.

AGENDA: 06/18/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020444.RCM

CASE BACKGROUND

- 05/30/01 - This company obtained Florida Public Service Commission Interexchange Company (IXC) Certificate No. 7824.
- 08/27/01 - The Commission received notice that this company had filed for Chapter 11 bankruptcy protection (Case No. 01-10005-RJN).
- 12/12/01 - The Division of the Commission Clerk & Administrative Services mailed the 2001 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 30, 2002.
- 02/20/02 - The Office of the General Counsel mailed a delinquent notice for nonpayment of the 2001 RAF.

DOCUMENT NUMBER-DATE

05869 JUN-5 02

FPSC-COMMISSION CLERK

DOCKET NO. 020444-TI  
DATE: JUNE 6, 2002

- **05/14/02** - The Commission received a letter from the company, which requested cancellation of its IXC certificate due to the 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.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant Novo Networks Metro Services, Inc.'s request for cancellation of its IXC Certificate No. 7824 due to bankruptcy?

**RECOMMENDATION:** Yes. The Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7824 with an effective date of May 14, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2001 and 2002 RAFs, including statutory penalty and interest charges for the year 2001, 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 certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing interexchange telecommunications services in Florida. (Isler; Dodson)

**STAFF ANALYSIS:** Rule 25-24.474, Florida Administrative Code, establishes the requirements for cancellation of interexchange company certificates. 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 certificate. 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.

DATE: JUNE 6, 2002

On August 27, 2001, the Commission received notice that Novo Networks Metro Services, Inc. had filed for Chapter 11 bankruptcy protection. On May 14, 2002, the Commission received a letter dated May 10, 2002, from Ms. Susie Holliday, Senior Vice President/Accounting, which requested cancellation of the company's IXC certificate since the company had no customers in Florida and due to the bankruptcy proceedings. In addition, Ms. Holliday advised that the company had no funds to pay the RAFs and asked that the unpaid RAFs be written-off.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7824 with an effective date of May 14, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2001 and 2002 RAFs, including statutory penalty and interest charges for the year 2001, 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 certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing interexchange telecommunications services in Florida.

DOCKET NO. 020444-TI  
DATE: JUNE 6, 2002

**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. (Dodson)

**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.