



Public Service Commission
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COMMISSION CLERK

DATE: NOVEMBER 7, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji*
OFFICE OF THE GENERAL COUNSEL (TEITZMAN) *Bell*

RE: DOCKET NO. 011277-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 7333 ISSUED TO ASSET CHANNELS-TELECOM, INC. FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES, AND 25-24.835, F.A.C., RULES INCORPORATED.

AGENDA: 11/19/02 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\011277.RCM

CASE BACKGROUND

- 03/02/00 - This company obtained Florida Public Service Commission Alternative Local Exchange Carrier (ALEC) Certificate No. 7333.
- 12/12/00 - The Division of the Commission Clerk & Administrative Services mailed the 2000 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 30, 2001.
- 02/20/01 - The Division of the Commission Clerk & Administrative Services mailed a delinquent notice for nonpayment of the 2000 RAF.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

- **09/27/01** - The Division of the Commission Clerk & Administrative Services notified technical staff that mail addressed to this company was returned by the US Postal Service stamped "No forward order on file; return to sender."
- **10/01/01** - Staff wrote the company and explained that a docket had been established for nonpayment of the 2002 RAF and included information on how to resolve the docket.
- **12/12/01** - Order No. PSC-01-2412-PAA-TX was issued, which imposed a \$1,000 penalty or cancelled the company's certificate. The company had until January 2, 2002 to protest the Order.
- **12/31/01** - The Commission received a petition from Roberta Napolitano, Chapter 7 Trustee, which stated that the company had originally filed for Chapter 11 bankruptcy protection but that it had been converted to a Chapter 7 proceeding. The petition requested that the penalty or cancellation of the certificate be reversed until the bankruptcy estate either transfers the certificate, closes the bankruptcy case, or requests a hearing. Ms. Napolitano included proof of the bankruptcy case, which is the first notice the Commission had received of a bankruptcy case.
- **01/03/02 thru 03/01/02** - Staff had several conversations with Ms. Napolitano concerning the status of the bankruptcy case.
- **04/02/02** - The Commission received a letter from Ms. Napolitano requesting that the petition for a hearing be withdrawn.
- **06/27/02 thru 09/30/02** - Staff had several more conversations with Ms. Napolitano concerning the status of the bankruptcy case. On September 30, 2002, Ms. Napolitano advised that there had been no change in the bankruptcy status and that the company did not want its certificate cancelled at this point.
- **10/29/02** - As of this date, the company's payment for the outstanding RAF has not been received.

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 this docket be closed?

RECOMMENDATION: Yes. Although the Commission was not aware of it, Asset Channels-Telecom, Inc. had filed for bankruptcy protection prior to the docket being established. Therefore, Order No. PSC-01-2412-PAA-TX, issued on December 12, 2001, should not be reinstated and this docket should be closed upon issuance of the Order from this recommendation. (Teitzman)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of Regulatory Assessment Fees by January 30, or the next business day, 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.

This docket was established for nonpayment of the 2000 RAF, plus statutory penalty and interest charges. Although the company had filed for Chapter 11 bankruptcy protection prior to this docket being opened, the Commission was not aware of the pending bankruptcy proceedings. The Chapter 11 case has subsequently been converted to a Chapter 7 case.

On December 12, 2001, Order No. PSC-01-2412-PAA-TX was issued, which imposed a \$1,000 penalty or cancelled the company's certificate. On December 31, 2001, the Chapter 7 Trustee, Roberta Napolitano, protested the Order by petitioning for a hearing and providing proof of the bankruptcy proceedings. Ms. Napolitano withdrew the request for a hearing on April 2, 2002. This docket has been on monitor status since that time. On September 30, 2002, Ms. Napolitano advised staff that there has been no change in the bankruptcy proceedings and that the company did not wish to cancel its certificate at this time.

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Asset Channels-Telecom, Inc. has not paid the 2000 RAF, including statutory penalty and interest charges.

Chapter 7 of Section 109 of the Federal Bankruptcy Code provides for total liquidation of the business entity. The filing of a bankruptcy petition under Chapter 7 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Upon such filing, an interim Trustee in Bankruptcy is immediately appointed who has the duty to collect and secure the non-exempt assets of the debtor and distribute them to creditors in the manner set forth in the Bankruptcy Code. Secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. Regulatory fees and penalties owed by a company to the Florida Public Service Commission are not secured debts and, as a practical matter, are uncollectible in a Chapter 7 proceeding. The Commission is prevented by the automatic stay provision of the Bankruptcy Code from taking action against this company for its failure to pay Regulatory Assessment Fees.

Therefore, staff believes that although the Commission was not aware of it, Asset Channels-Telecom, Inc. had filed for bankruptcy protection prior to the docket being established. Therefore, Order No. PSC-01-2412-PAA-TX, issued on December 12, 2001, should not be reinstated and this docket should be closed upon issuance of the Order from this recommendation.