

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-**

DATE: FEBRUARY 20, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISHER)  
OFFICE OF THE GENERAL COUNSEL (J. ROJAS) *9R*

RE: DOCKET NO. 030072-TI - BANKRUPTCY CANCELLATION BY FLORIDA  
PUBLIC SERVICE COMMISSION OF IXC CERTIFICATE NO. 7232  
ISSUED TO PF.NET NETWORK SERVICES CORP., EFFECTIVE  
12/31/02.

AGENDA: 03/04/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030072.RCM

CASE BACKGROUND

- 08/07/99 - This company obtained Florida Public Service Commission Interexchange Carrier (IXC) Certificate No. 7232.
- 01/29/02 - The Commission received the company's payment for the 2001 Regulatory Assessment Fee (RAF) and reported revenues in the amount of -\$35,902 for the period ended December 31, 2001.
- 07/23/02 - The Commission received notice that this company had filed for Chapter 11 bankruptcy protection.
- 01/17/03 - The Commission received a letter from the company advising that due to the bankruptcy, it had ceased all telecommunications operations on June 24, 2002. In addition, the company requested cancellation of its IXC certificate.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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COMMISSION CLERK

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- **02/03/03** - As of this date, there are no outstanding consumer complaints against PF.Net Network Services Corp.

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 PF.Net Network Services Corp.'s request for cancellation of its IXC Certificate No. 7232 due to bankruptcy?

**RECOMMENDATION:** Yes. The Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7232 with an effective date of December 31, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2002 RAF should not be sent to the Florida Department of Financial Services 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 carrier services in Florida. (Isler; J. Rojas)

**STAFF ANALYSIS:** Rule 25-24.474, Florida Administrative Code, establishes the requirements for cancellation of telecommunications 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, incorporated by Rule 25-24.480, 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 July 23, 2002, the Commission received notice that PF.Net Network Services Corp. had filed for Chapter 11 bankruptcy protection. On January 17, 2003, the Commission received a letter dated January 13, 2003, from Ms. Kay Parry, Vice President of Corporate Operations, which advised that the company ceased operations on June 24, 2002, and requested cancellation of its IXC certificate. In addition, the company stated that it did not have any resources to pay the 2002 Regulatory Assessment Fee.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7232 with an effective date of December 31, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2002 RAF should not be sent to the Florida Department of Financial Services 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 carrier services in Florida.

**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.  
(J. Rojas)

**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.