



Public Service Commission  
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DATE: MAY 8, 2003  
TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYO)  
FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) OFFICE OF THE GENERAL COUNSEL (TEITZMAN) AT fax  
RE: DOCKET NO. 030328-TI - BANKRUPTCY CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF IXC CERTIFICATE NO. 4068 ISSUED TO RSL COM U.S.A., INC., EFFECTIVE 4/7/03.  
AGENDA: 05/20/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE  
CRITICAL DATES: NONE  
SPECIAL INSTRUCTIONS: NONE  
FILE NAME AND LOCATION: S:\PSC\CMP\WP\030328.RCM

CASE BACKGROUND

- 09/06/95 - This company obtained Florida Public Service Commission Interexchange Carrier (IXC) Certificate No. 4068.
- 07/13/01 - The Commission received notice that this company filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court Southern District of New York (Case Nos. 01-11457 and 01-11469-ALG).
- 03/13/02 - The Commission received the company's 2001 Regulatory Assessment Fee (RAF) return and payment. The company reported revenues in the amount of \$668,783 for the period ended December 31, 2001.
- 04/07/03 - The Commission received a letter from the company's attorney, Mr. David A. O'Connor, advising that due to the bankruptcy, the company had no customers and had ceased

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operations. Mr. O'Connor requested cancellation of the company's certificate.

- **04/22/03** - As of this date, there are no outstanding consumer complaints against RSL COM U.S.A., Inc.

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 RSL COM U.S.A., Inc.'s request for cancellation of its IXC Certificate No. 4068 due to bankruptcy?

**RECOMMENDATION:** Yes. The Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 4068 with an effective date of April 7, 2003. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2002 and 2003 RAFs, plus penalty and interest charges for the year 2002, 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 telecommunications' services in Florida. (Isler; Teitzman)

**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)(4) 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. 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 pre-petition 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.

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On July 13, 2001, the Commission received notice that RSL COM U.S.A., Inc. had filed for Chapter 11 bankruptcy protection. On April 7, 2003, the Commission received a letter from Mr. David A. O'Connor, Attorney for RSL COM U.S.A., Inc., which advised that the company had ceased operations and had no customers. Mr. O'Connor also requested cancellation of the company's IXC certificate.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 4068 with an effective date of April 7, 2003. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2002 and 2003 RAFs, plus penalty and interest charges for the year 2002, 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 telecommunications' 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. (Teitzman)

**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.