



Public Service Commission  
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COMMISSION CLERK

**DATE:** AUGUST 21, 2003

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

**FROM:** DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji*  
OFFICE OF THE GENERAL COUNSEL (L. FORDHAM) *C.F.F. BK*

**RE:** DOCKET NO. 030674-TP - BANKRUPTCY CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION, PURSUANT TO REQUEST BY ALEX F. MATTERA, COUNSEL TO THE PLAN TRUSTEE OF THE DEBTOR, OF IXC REGISTRATION NO. TJ320 AND CLEC CERTIFICATE NO. 7342 ISSUED TO ESSENTIAL.COM, INC., EFFECTIVE JULY 16, 2003. *DMK*

**AGENDA:** 09/02/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\030674.RCM

CASE BACKGROUND

- 02/17/00 - This company obtained Interexchange Carrier (IXC) Registration No. TJ320.
- 03/02/00 - This company obtained Competitive Local Exchange Company (CLEC) Certificate No. 7342.
- 02/27/01 - The company paid its 2000 Regulatory Assessment Fee (RAF) and reported revenues in the amount of \$98,774 for the period ended December 31, 2000, for its IXC registration. The company has not paid any RAF for its CLEC certificate.
- 08/03/01 - The Commission received notice that this company filed for Chapter 11 bankruptcy protection in the United

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States Bankruptcy Court District of Massachusetts (Eastern Division) (Case No. 01-15339-WCH).

- **03/11/03** - The Division of the Commission Clerk & Administrative Services (CCA) notified staff that it had received a note from Ms. Kathy Deschambault of United Systems Access Telecom, Inc. (United Systems). Ms. Deschambault advised that United Systems managed essential.com, inc.'s accounts until United Systems was certificated in each state. However, she stated that essential.com no longer existed and requested that we remove United Systems' address as essential.com's address. Ms. Deschambault included a "Notice of entry of order confirming plan of liquidation dated November 2, 2001" and a copy of a letter advising Donald Swanson as the new liaison for essential.com designated by the Plan Trustee.
- **03/12/03** - Staff wrote Mr. Swanson and asked him to request cancellation of essential.com's CLEC certificate and IXC registration if the company no longer existed.
- **03/27/03** - Staff faxed a note to the company asking that it request cancellation of its CLEC certificate and IXC registration if it did not need them.
- **07/14/03** - Staff faxed a letter to the Plan Trustee's attorney, Mr. Alex Mattera, and asked if the Commission could cancel the company's CLEC certificate and IXC registration due to the bankruptcy.
- **07/16/03** - Mr. Mattera called staff and stated that essential.com had filed for bankruptcy on June 29, 2001, has not had any customers since August 10, 2001, and has not done any business since. Mr. Mattera confirmed that the company no longer existed. Mr. Mattera subsequently e-mailed staff and requested cancellation of the company's CLEC certificate and IXC registration and asked that any unpaid RAFs be written-off.
- **07/25/03** - The Commission received a letter dated July 22, 2003 from Mr. Stephen J. Gilbert, President of United Systems Access Telecom, Inc. requesting cancellation of essential.com, inc.'s CLEC certificate and IXC registration.

- **08/05/03** - As of this date, there are no outstanding consumer complaints against essential.com, 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 essential.com, inc. cancellation of its IXC Registration No. TJ320 and CLEC Certificate No. 7342 due to bankruptcy?

**RECOMMENDATION:** The Commission should grant the company a bankruptcy cancellation of its IXC Registration No. TJ320 and CLEC Certificate No. 7342 with an effective date of July 16, 2003. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2001, 2002, and 2003 RAFs, including penalty and interest charges, for its IXC registration and the 2000, 2001, 2002, and 2003 RAFs, including penalty and interest charges, for its CLEC certificate, 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 IXC registration and CLEC certificate are cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing interexchange telecommunications and competitive local exchange services in Florida. (Isler; L. Fordham)

**STAFF ANALYSIS:** 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 bankruptcy plan trustee's attorney has requested cancellation of essential.com, inc.'s IXC registration and CLEC certificate. Under those circumstances, this Commission is free to do so.

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 August 3, 2001, the Commission received notice that essential.com, inc. had filed for Chapter 11 bankruptcy protection. On July 16, 2003, the Commission received an e-mail from Mr. Alex Mattera, Attorney for the plan trustee, which advised that the company had ceased operations and had no customers. Mr. Mattera also requested cancellation of the company's IXC registration and CLEC certificate and asked that any unpaid Regulatory Assessment Fees be written-off.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its IXC Registration No. TJ320 and CLEC Certificate No. 7342 with an effective date of July 16, 2003. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2001, 2002, and 2003 RAFs, including penalty and interest charges, for its IXC registration and the 2000, 2001, 2002, and 2003 RAFs, including penalty and interest charges, for its CLEC certificate, 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 IXC registration and CLEC certificate are cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing interexchange telecommunications and competitive local exchange services in Florida.

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**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.  
(L. Fordham)

**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 the issuance of the Order, this docket should be closed upon issuance of a Consummating Order.