



Public Service Commission

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COMMISSION
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DATE: DECEMBER 23, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *pi*
OFFICE OF THE GENERAL COUNSEL (FORDHAM) *EST AK*

RE: DOCKET NO. 031034-TI - FINDING OF INSOLVENCY CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF IXC REGISTRATION NO. TJ590 ISSUED TO VIRTUALCOM, INC. FOR VIOLATION OF SECTION 364.336, FLORIDA STATUTES. *MMK*

AGENDA: 01/06/04 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\031034.RCM

CASE BACKGROUND

- **12/11/01** - This company obtained Florida Public Service Commission Interexchange Telecommunications Registration No. TJ590.
- **09/13/02** - The Commission received the company's 2001 Regulatory Assessment Fee (RAF) return. The company reported no revenues for the period ended December 31, 2001.
- **12/12/02** - The Division of the Commission Clerk & Administrative Services mailed the 2002 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 30, 2003.
- **02/21/03** - The Office of the General Counsel sent a delinquent notice via certified mail attempting collection of the 2002

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RAF. The US Postal Service returned the unopened delinquent notice stamped "Moved, left no address."

- **03/19/03** - The Division of the Commission Clerk & Administrative Services notified staff that this company had not paid the 2002 RAF.
- **04/28/03** - Staff wrote the company and explained that payment for the RAF needed to be paid by May 19, 2003, to avoid an enforcement docket from being established.
- **05/12/03** - The Commission received a letter dated May 8, 2003, from Mr. Steven Zuckerman of Michael Moecker & Associates, Inc., which enclosed a notice of "Assignment for the benefit of creditors."
- **05/30/03** - Staff called Mr. Zuckerman, who stated that the company no longer operated and would write a letter requesting cancellation of the company's tariff and removal from the register.
- **11/07/03** - The Commission received a letter from Mr. Zuckerman, which requested cancellation of the company's tariff and removal from the register.
- **12/12/03** - As of this date the past due RAF, including statutory late payment charges, has not been paid. There are no outstanding customer complaints pending.

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 VirtualCom, Inc.'s request for cancellation of its tariff and removal of IXC Registration No. TJ590 due to the finding of insolvency?

RECOMMENDATION: The Commission should grant the company a finding of insolvency cancellation of its tariff and removal of IXC Registration No. TJ590 with an effective date of November 7, 2003. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2002 and 2003 RAFs, including statutory late payment 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 tariff is cancelled and the company's name removed from the register in accordance with the Commission's Order from this recommendation, VirtualCom, Inc. should be required to immediately cease and desist providing intrastate interexchange services in Florida. **(Isler; Fordham)**

STAFF ANALYSIS: 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 late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

On May 12, 2003, the Commission received a letter from Mr. Steven Zuckerman of Michael Moecker & Associates, Inc., which enclosed a notice of "Assignment for the Benefit of Creditors." Staff called Mr. Zuckerman on May 30, 2003, who advised that the company was no longer in business and stated that he would write a letter requesting cancellation of the company's tariff and removal from the register. The follow up letter was received November 7, 2003.

Basically, a finding of insolvency is the state equivalent of a federal bankruptcy case. It is a procedure for the administration of insolvent estates, administered by the circuit courts of Florida. The statute provides only for liquidation instead of provisions for efforts to reorganize and survive as is provided in the Federal Bankruptcy Code.

Therefore, staff believes the Commission should grant the company a finding of insolvency cancellation of its tariff and removal of IXC Registration No. TJ590 with an effective date of November 7, 2003. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2002 and 2003 RAFs, including statutory late payment 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 tariff is cancelled and the company's name removed from the register in accordance with the Commission's Order from this recommendation, VirtualCom, Inc. should be required to immediately cease and desist providing intrastate interexchange 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.
(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 issuance of the Order, this docket should be closed upon issuance of a Consummating Order.