

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: July 22, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Isler)
Office of the General Counsel (Rojas)

RE: Docket No. 030772-TI – Cancellation of tariff and removal from register by Florida Public Service Commission of IXC Registration No. TJ292 issued to TransNet Connect, Inc. for violation of Section 364.336, Florida Statutes.

AGENDA: 08/03/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030772.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission grant TransNet Connect, Inc. cancellation of its tariff and removal from the register with an effective date of July 10, 2003, due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that any unpaid Regulatory Assessment Fees, including statutory penalty and interest charges, should not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts; and require the company to immediately cease and desist providing interexchange telecommunications services in Florida?

Recommendation: Yes. (Isler; Rojas)

Staff Analysis: On April 28, 2003, staff wrote the company a letter and explained that the 2002 Regulatory Assessment Fee (RAF) had not been paid and requested the fee be paid to avoid an enforcement docket from being established. On July 10, 2003, staff called the company and spoke to the owner, Mr. Stan Crews, who advised that the company is out of business and no

longer needs its certificate. Mr. Crews asked staff to e-mail him the information required to cancel the company's certificate. Staff e-mailed Mr. Crews the same day. No response was received; therefore, Docket No. 030772-TI was established. On October 13, 2003, staff received notice that TransNet Connect, Inc. had filed for Chapter 7 bankruptcy protection on October 1, 2003. Staff wrote and called the bankruptcy trustee, Ms. Shari Jansen, and asked that a letter be sent to the Commission requesting cancellation due to bankruptcy. On April 1, 2004, staff was told by Ms. Jansen's office that Ms. Jansen had been dismissed of her duties as trustee on November 6, 2003, because this was a "no assets" case. Staff also attempted to get the company's bankruptcy attorney to write a letter requesting cancellation without success. The current attorney's office advised staff that since this bankruptcy case is closed, it is unlikely that the attorney could make a request for cancellation in writing. Although staff has been unsuccessful in obtaining a written request for cancellation due to the bankruptcy, the company's owner verbally requested cancellation and subsequently filed for Chapter 7 bankruptcy. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, and 364.285, Florida Statutes.

Interexchange companies are subject to Section 364.336, Florida Statutes, which requires payment of Regulatory Assessment Fees by January 30 of the subsequent year for telecommunications companies, and Section 364.285, Florida Statutes, which authorizes the Commission to impose penalties for failure to comply with a lawful rule or order of the Commission or any provision of Chapter 364, Florida Statutes, including the failure to pay RAFs.

In this case, however, the company has filed for bankruptcy, and pursuant to Section 362(b)(4) of the Bankruptcy Code, the filing of a petition for bankruptcy relief acts as an automatic stay that enjoins a governmental entity from exercising its regulatory authority to collect a pre-petition debt. Additionally, in any bankruptcy liquidation or reorganization, secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. Staff notes that in this case there are no assets. Regulatory Assessment Fees, interest, 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 bankruptcy proceeding where liquidation occurs. As such, the Commission would be prevented from collecting the RAFs owed by this company, and from assessing and collecting a penalty for failure to pay the RAFs.

Accordingly, staff recommends that the company be granted the verbally requested cancellation of its tariff, that it be removed from the Commission's IXC register, and that any unpaid RAFs be written-off as uncollectible. In addition, the company should immediately cease and desist providing interexchange telecommunications services in Florida if it has not already done so.

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Issue 2: Should this docket be closed?

Recommendation: Yes. Staff recommends that 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 upon issuance of a Consummating Order. **(Rojas)**

Staff Analysis: Staff recommends that the Commission take action as set forth in the foregoing staff recommendation statement.