

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: October 7, 2004

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

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

RE: Docket No. 040959-TI – Bankruptcy cancellation by Florida Public Service Commission of IXC Registration No. TJ006 issued to STAR Telecommunications, Inc., effective 8/25/04.

AGENDA: 10/19/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040959.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission grant STAR Telecommunications, Inc. cancellation of its tariff and removal from the register with an effective date of August 25, 2004, due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that any unpaid Regulatory Assessment Fees, including statutory late payment 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; Scott)

Staff Analysis: See attached proposed Order.

Docket No. 040959-TI

Date: October 7, 2004

Issue 2: Should this docket be closed?

Recommendation: Yes, if no protest is filed and upon issuance of a Consummating Order.
(Scott)

Staff Analysis: 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.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation by Florida Public Service Commission of IXC Registration No. TJ006 issued to STAR Telecommunications, Inc., effective 8/25/04.	DOCKET NO. 040959-TI ORDER NO. ISSUED:
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION ORDER
GRANTING CANCELLATION OF INTEREXCHANGE CARRIER
TARIFF AND REMOVAL FROM THE REGISTER DUE TO CHAPTER 11 BANKRUPTCY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

STAR Telecommunications, Inc. currently holds Registration of Public Convenience and Necessity No. TJ006, issued by the Commission on November 5, 1997, authorizing the provision of Interexchange Carrier service.

Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee of \$50 by January 30 of the subsequent year and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

On September 24, 2001, the Commission received notice that this company had filed for Chapter 11 bankruptcy protection on March 13, 2001. On July 20, 2004, our staff wrote the company's attorney, Laura Davis Jones with the law firm of Pachulski, Stang, Ziehl, Young, Jones, & Weintraub, to explain that the Regulatory Assessment Fee had not been paid since 2001, and the company's corporation listing had been revoked on October 4, 2002, with the Florida Department of State, Division of Corporations. Our staff asked Ms. Jones to file a letter requesting cancellation of the company's tariff and removal from the register if it no longer had need of its registration in Florida. On August 25, 2004, a letter was filed by the company's

attorney, David W. Carickhoff, Jr. with the same law firm, which advised staff that STAR Telecommunications, Inc. has no ongoing operations and that it was requesting cancellation of the company's IXC tariff and removal from the register as it was a "liquidating debtor." The company further requests that any unpaid Regulatory Assessment Fees be written off as no funds exist.

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 tariff and removal from the register. Under those circumstances, this Commission is free to do so. We note that the Division of the Commission Clerk and Administrative Services will be notified that the past due Regulatory Assessment Fees should not be sent to the Department of Financial Services for collection, but that permission for the Commission to write-off the uncollectible amount shall be requested.

Accordingly, we find that STAR Telecommunications, Inc.'s request for cancellation of its IXC Registration No. TJ006 due to Chapter 11 bankruptcy is granted, effective August 25, 2004. In addition, the 2001, 2002, 2003, and 2004 Regulatory Assessment Fees and the statutory late payment charges for the years 1999, 2000, 2001, 2002, and 2003, shall not be sent to the Florida Department of Financial Services for collection, and permission for us to write-off the uncollectible amount shall be requested. STAR Telecommunications, Inc. shall immediately cease and desist providing Interexchange Carrier services in Florida.

We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that STAR Telecommunications, Inc.'s Registration No. TJ006 to provide Interexchange Carrier services is hereby canceled, effective August 25, 2004. It is further

ORDERED that the outstanding Regulatory Assessment Fees should not be sent to the Department of Financial Services for collection. The Division of the Commission Clerk and Administrative Services, instead, shall request for permission to write-off the uncollectible amount. It is further

ORDERED that if STAR Telecommunications, Inc.'s Registration No. TJ006 is cancelled in accordance with this Order, that entity shall immediately cease and desist providing Interexchange Carrier services in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this ____ day of _____.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on _____.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.