

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: April 21, 2005

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. 040899-TI – Compliance investigation of World Access Communications Corp. for apparent violation of Section 364.336, Florida Statutes.

AGENDA: 05/03/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040899.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission vacate Order No. PSC-04-1246-PAA-TI, issued on December 17, 2004; grant World Access Communications Corp. cancellation of its IXC tariff and removal from the register with an effective date of December 31, 2004, due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that any unpaid RAFs, including statutory late payment charges, 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 intrastate interexchange telecommunications services in Florida?

Recommendation: Yes. (Isler, Scott)

Staff Analysis: See attached proposed Order.

Docket No. 040899-TI

Date: April 21, 2005

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 FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of World Access Communications Corp. for apparent violation of Section 364.336, Florida Statutes.	DOCKET NO. 040899-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
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING CANCELLATION OF
INTRASTATE INTEREXCHANGE TELECOMMUNICATIONS CARRIER TARIFF AND
REMOVAL FROM THE REGISTER DUE TO BANKRUPTCY, VACATING ORDER NO.
PSC-04-1246-PAA-TI, AND REQUIRING WORLD ACCESS COMMUNICATIONS CORP.
TO IMMEDIATELY CEASE AND DESIST PROVIDING IXC SERVICE

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.

World Access Communications Corp. currently holds Registration of Public Convenience and Necessity No. TI910, issued by the Commission on November 16, 1989, authorizing the provision of intrastate interexchange telecommunications (IXC) 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. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due. All entities that apply for registration receive a copy of our rules governing intrastate interexchange telecommunications service.

Commission records showed that World Access Communications Corp. had not paid the 2003 Regulatory Assessment Fee plus applicable late payment charges; therefore, our staff wrote the company on June 10, 2004, and advised that payment of the 2003 Regulatory Assessment Fee should be paid by July 2, 2004, to avoid a docket from being established. A response was not received and this docket was established. On December 17, 2004, Order No. PSC-04-1246-PAA-TI was issued penalizing the company in the amount of \$1,000, or in the alternative, cancelling its tariff and removing its name from the register, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No Petition for Formal Proceeding was initiated and the Order became final and effective.

On January 13, 2005, the Commission received a telephone call and follow-up e-mail from Mr. James Dickey, the company's attorney. Mr. Dickey advised that the company had filed for bankruptcy, was no longer in business, requested cancellation of its IXC tariff and removal from the register, and asked that any unpaid Regulatory Assessment Fees be written-off as the company had no funds to pay the fees.

Although the Commission had not received prior notice that World Access Communications Corp. had filed for Chapter 7 bankruptcy, staff confirmed with the US Bankruptcy Court, Southern District of Florida, that the company filed for bankruptcy on July 14, 2003, and the bankruptcy case was closed on December 29, 2004.

Chapter 7 of the US Bankruptcy Code provides for liquidation by business entities. The filing of a bankruptcy petition under Chapter 7 invokes an automatic injunction known as the Automatic Stay, codified in US Bankruptcy Code Section 362. 11 USC 362 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 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 hold that Order No. PSC-04-1246-PAA-TI, issued on December 17, 2004, shall be vacated. World Access Communications Corp.'s request for cancellation of its IXC tariff and removal from the register with an effective date of December 31, 2004, due to bankruptcy is hereby granted. We shall notify the Division of the Commission Clerk & Administrative Services that unpaid Regulatory Assessment Fees, including statutory late payment charges, not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts. Last, we hold that World Access Communications Corp. shall immediately cease and desist providing intrastate interexchange telecommunications services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.02, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-04-1246-PAA-TI, issued on December 17, 2004, is hereby vacated. It is further

ORDERED that the outstanding Regulatory Assessment Fees shall 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 by the Florida Public Service Commission that World Access Communications Corp.'s IXC tariff and Registration No. TI910 to provide intrastate interexchange services due to bankruptcy is hereby cancelled, effective December 31, 2004. It is further

ORDERED by the Florida Public Service Commission that World Access Communications Corp. shall immediately cease and desist providing intrastate interexchange 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.