

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: May 19, 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. 050237-TI – Acknowledgment of cancellation of IXC Registration No. TJ758 by Better World Telecom, Inc.

AGENDA: 05/31/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050237.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny Better World Telecom, Inc.'s request for a voluntary cancellation and instead cancel IXC Registration No. TJ758 on the Commission's own motion with an effective date of March 15, 2005?

Recommendation: Yes. (Isler, Scott)

Staff Analysis: See attached proposed Order.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If the company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If the company fails to pay the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the company's tariff should be cancelled administratively, its name removed from the register, and the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. If the company's tariff is cancelled and its name removed from the register in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing intrastate interexchange telecommunications service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the company's tariff and removal from the register. (Scott)

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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Acknowledgment of cancellation of IXC
Registration No. TJ758 by Better World
Telecom, Inc.

DOCKET NO. 050237-TI
ORDER NO.
ISSUED:

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 CANCELLING INTRASTATE
INTEREXCHANGE TELECOMMUNICATIONS TARIFF AND REGISTRATION ON THE
COMMISSION'S OWN MOTION

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.

Better World Telecom, Inc. currently holds Intrastate Interexchange Telecommunications (IXC) Registration No. TJ758, issued by this Commission on June 23, 2003. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee (RAF) of \$50 if the registration was active during any portion of the calendar year. 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.

On March 15, 2005, this Commission received a letter from the company's CEO, Mr. James F. Kenefick, advising that Better World Telecom, Inc. has not operated as an IXC since February 2003 and requested cancellation of its tariff and removal from the register. Our staff wrote the company on March 24, 2005, and explained that before a voluntary cancellation of the tariff and removal from the register could be recommended, the 2004 and 2005 Regulatory

Assessment Fees needed to be paid. On March 30, 2005, our staff received an e-mail from Ms. Jill McConnell, a representative of Better World Telecom, Inc. Ms. McConnell advised that Better World Telecom, Inc. had received our staff's letter, had not operated since 2003, and that the company had no funds to pay the Regulatory Assessment Fees. Our staff explained that if the Regulatory Assessment Fees were not paid, the alternative would be to cancel the tariff and registration on this Commission's own motion.

For the reasons described above, we deny Better World Telecom, Inc.'s request for voluntary cancellation of its tariff and removal from the register. However, we find it appropriate to involuntarily cancel the tariff and remove its name from the register effective March 15, 2005, on this Commission's own motion for failure to pay the Regulatory Assessment Fee, pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code.

Since it appears Better World Telecom, Inc. is no longer in business, there would be no purpose in requiring it to pay a penalty. By cancelling the company's tariff and removing it from the register on this Commission's own motion, however, we would be able to track the company should it apply for another registration with us in the future. The cancellation of the tariff and removal from the register in no way diminishes the entity's obligation to pay applicable Regulatory Assessment Fees and accrued statutory late payment charges. If this Order is not protested, the company's IXC tariff and its name shall be removed from the register effective March 15, 2005. The collection of the past due fees shall be referred to the Florida Department of Financial Services for further collection efforts. If Better World Telecom, Inc. is removed from the register in accordance with this Order, the company shall immediately cease and desist providing intrastate interexchange telecommunications service 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 that Better World Telecom, Inc.'s IXC tariff and registration is hereby cancelled effective March 15, 2005, on this Commission's own motion for failure to pay the 2004 and 2005 Regulatory Assessment Fees, along with statutory late payment charges for the years 2003 and 2004, pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the collection of the past due fees shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that the cancellation of the tariff and removal from the register in no way diminishes Better World Telecom, Inc.'s obligation to pay applicable Regulatory Assessment Fees and accrued statutory late payment charges. It is further

ORDERED that if Better World Telecom, Inc.'s IXC tariff and registration is cancelled in accordance with this Order, Better World Telecom, Inc. shall immediately cease and desist providing intrastate interexchange telecommunications service 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 upon receipt of the Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the tariff and removal from the register.

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)

KS

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.