

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-

RECEIVED 11:00
AUG 23 AM 8:43
COMMISSION
CLERK

DATE: AUGUST 23, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *PAC*
DIVISION OF LEGAL SERVICES (ELLIOTT) *JAE*

RE: DOCKET NO. 001245-TI - CANCELLATION BY FLORIDA PUBLIC
SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS
CERTIFICATE NO. 4441 ISSUED TO CORPORATE SERVICES TELCOM,
INC. FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY
ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 09/04/01 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001245.RCM

CASE BACKGROUND

- 06/01/96 - This company obtained Florida Public Service Commission Certificate No. 4441.
- 12/08/99 - The Division of the Commission Clerk & Administrative Services mailed the 1999 RAF return notice. Payment was due by January 31, 2000.
- 02/29/00 - The Division of the Commission Clerk & Administrative Services mailed a delinquent notice for nonpayment of the 1999 RAF.

DOCUMENT NUMBER-DATE

10435 AUG 23

FPSC-COMMISSION CLERK

- 08/02/00 - The Commission received notice that Corporate Services Telcom, Inc. had filed for Chapter 11 bankruptcy protection.
- 08/25/00 - Staff established this docket to cancel Corporate Telcom, Inc.'s certificate for nonpayment of 1999 Regulatory Assessment Fees (RAF).
- 12/12/00 - The Division of the Commission Clerk & Administrative Services mailed the 2000 RAF return form. Payment was due January 30, 2001.
- 02/21/01 - The Division of the Commission Clerk & Administrative Services mailed a delinquent notice.
- 03/28/01 - Staff called the company's attorney, Ms. Carolyn J. Genereux, and was advised that the company wished to keep its certificate active. Staff was advised that although the 1999 RAF is considered pre-petition charges and would not be paid at this time, the company would pay for the 2000 RAF.
- 04/18/01 - The Commission received a partial payment for the 2000 RAF. The company reported revenues in the amount of \$4,819.91 for the period ended December 31, 2000.

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 this docket be closed?

RECOMMENDATION: Yes, this docket should be closed upon issuance of the Final Order. In addition, the Division of Administration should not forward the outstanding RAFs to the Comptroller's Office for collection at this time. (Isler; Elliott)

STAFF ANALYSIS: This docket was established for nonpayment of the 1999 RAF, plus statutory penalty and interest charges for the years 1998 and 1999. Although the Commission had received notice that Corporate Services Telcom, Inc. had filed for Chapter 11 bankruptcy protection prior to staff opening this docket, technical staff was not aware of the pending bankruptcy proceedings. As soon as staff was made aware of the bankruptcy proceedings, this docket was put on monitor status.

Corporate Services Telcom, Inc. has not paid the 1999 RAF nor the statutory penalty and interest charges for the years 1998 and 1999. In addition, the company's attorney advised staff that the 2000 RAF would be paid. The company subsequently paid a portion of the 2000 RAF, but left a balance, including statutory penalty and interest charges.

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 or engage in other economic regulation. It appears clear, however, that regulatory fees and penalties already accrued by the company are not extinguished by a Chapter 11 proceeding. If the company emerges from Chapter 11, the State could, at that time, again pursue collection.

Therefore, staff believes the Commission should close this docket upon issuance of the Final Order. In addition, the Division of Administration should not forward the outstanding RAFs to the Comptroller's Office for collection at this time.