



Public Service Commission

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REGULATORY AND REPORTING

DATE: MARCH 22, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *Dji*
DIVISION OF LEGAL SERVICES (BANKS) *GRB B/K*

RE: DOCKET NO. 001313-TI - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 5696 ISSUED TO TWISTER COMMUNICATIONS NETWORK, INC. FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES, AND 25-24.480(2) (A) AND (B), F.A.C., RECORDS & REPORTS; RULES INCORPORATED.

AGENDA: 04/03/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001313.RCM

CASE BACKGROUND

- **10/13/98** - This company was granted Florida Public Service Commission Certificate No. 5696.
- **01/29/99** - The Commission received the company's payment for the 1998 Regulatory Assessment Fee (RAF). The company reported no revenues for the period ended December 31, 1998.
- **12/08/99** - The Division of Administration mailed the 1999 RAF return notice. Payment was due by January 31, 2000. The 1999 RAF notice was subsequently returned by the U.S. Postal Service (USPS) stamped "return to sender" and "forwarding order expired."

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FPSC-RECORDS/REPORTING

- **02/29/00** - The Division of Administration mailed a delinquent notice for nonpayment of the 1999 RAF.
- **09/06/00** - The Commission received notice that this company had filed for Chapter 7 Bankruptcy proceedings.
- **03/19/01** - As of this date, the 1999 RAF, plus statutory penalty and interest charges, have not been paid. In addition, the 2000 fee is now past due and has not been paid.

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 the Commission cancel Twister Communications Network, Inc.'s Certificate No. 5696?

RECOMMENDATION: Yes. This company filed for Chapter 7 bankruptcy on May 23, 2000. Therefore, the Commission should grant the company a "bankruptcy cancellation" of its Certificate No. 5696, effective September 6, 2000. In addition, the Division of Administration will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write-off the uncollectible amount should be requested. (Isler; Banks)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30, or the next business day, of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts. Commission records show that this company has not paid its 1999 and 2000 RAFs, plus statutory penalty and interest charges.

On September 6, 2000, the Commission received a notice that advised the company had filed for protection under Chapter 7 of the Federal Bankruptcy Code on May 23, 2000. Chapter 7 of Section 109 of the Federal Bankruptcy Code provides for total liquidation of

the business entity. The filing of a bankruptcy petition under Chapter 7 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Upon such filing, an interim Trustee in Bankruptcy is immediately appointed who has the duty to collect and secure the non-exempt assets of the debtor and distribute them to creditors in the manner set forth in the Bankruptcy Code. Secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. Regulatory fees 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 Chapter 7 proceeding.

The Commission is prevented by the automatic stay provision of the Bankruptcy Code from taking action against this company for its failure to pay regulatory assessment fees. In a Chapter 7 proceeding, however, the company ceases to exist and, accordingly, its certificate must be reclaimed. Furthermore, the Division of Administration should be notified that the past due RAFs should not be sent to the Comptroller's Office for collection.

Accordingly, the Commission should grant the company a "bankruptcy cancellation" of its Certificate No. 5696, effective September 6, 2000. In addition, the Division of Administration will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write-off the uncollectible amount should be requested.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission approves or modifies staff's recommendation on Issue 1, this docket should be closed upon cancellation of the certificate. The Order issued from this recommendation will become final upon issuance of the 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. If the Commission denies staff's recommendation on Issue 1, this docket should be closed administratively. (Banks)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or modified, the result will be a proposed agency action order and this docket should be closed upon cancellation of the certificate. The Order issued from this recommendation will become final upon the issuance of the 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. If the Commission denies staff's recommendation on Issue 1, this docket should be closed administratively.