

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 11, 2013

TO: Office of Commission Clerk (Cole)

FROM: Office of Telecommunications (Beard, Earnhart)
Office of the General Counsel (Hopkins)

CSB DE PRK Smt AT [Signature]

RE: Docket No. 130218-TX – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 7229 issued to Ciera Network, Systems Inc., effective November 9, 2010.

Docket No. 130219-TX – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 7674 issued to Southern Telcom Network, Inc., effective June 29, 2011.

AGENDA: 10/24/13 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\TEL\WP\130218.130219.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission cancel Ciera Network, Systems Inc. and Southern Telcom Network, Inc.'s, competitive local exchange telecommunications company (CLEC) certificates, service schedules, and remove each company's name from the Master Commission Directory (MCD) on its own motion effective the date each company's Chapter 7 Bankruptcy case terminated; direct the Division of Administrative and Information Technology Services (AIT) to

write off any statutory late payment charges, or penalty and interest instead of requesting collection services; and require the companies to immediately cease and desist providing telecommunications services in Florida?

Recommendation: Yes, each entity's CLEC certificate and service schedule should be cancelled and each company's name should be removed from the MCD on the Commission's own motion due to bankruptcy as listed on Attachment A. Also, AIT should write off any unpaid statutory late payment charges, or penalty and interest instead of requesting collection service. The companies should immediately cease and desist providing telecommunications services in Florida. (Beard, Earnhart, Hopkins)

Staff Analysis: See attached proposed Order.

Docket Nos. 130218-TX, 130219-TX

Date: October 11, 2013

Issue 2: Should these dockets be closed?

Recommendation: Yes, these dockets should be closed if no protest is filed upon issuance of a Consummating Order. (Hopkins)

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. A protest in one docket should not prevent the action in a separate docket from becoming final. These dockets should then be closed upon issuance of a Consummating Order.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation by Florida
Public Service Commission of CLEC
Certificate No. 7229 issued to Ciera Network,
Systems Inc., effective November 9, 2010.

DOCKET NO. 130218-TX

In re: Bankruptcy cancellation by Florida
Public Service Commission of CLEC
Certificate No. 7674 issued to Southern
Telcom Network, Inc., effective June 29, 2011.

DOCKET NO. 130219-TX
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION
ORDER CANCELLING COMPETITIVE LOCAL EXCHANGE
TELECOMMUNICATIONS COMPANY CERTIFICATES
AND SERVICE SCHEDULES DUE TO BANKRUPTCY
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.

Ciera Network, Systems Inc. (Ciera Network, Systems) currently holds competitive local exchange telecommunications services (CLEC) Certificate No. 7229, issued by the Commission on November 12, 1999. Southern Telcom Network, Inc. (Southern Telcom Network) holds CLEC Certificate No. 7674, issued by the Commission on January 8, 2001.

Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) if the certificate was active during any

Date: October 11, 2013

portion of the calendar year and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Pursuant to 11 U.S.C. § 362 (b)(4) of the US Bankruptcy Code, the filing of a petition for bankruptcy relief acts as an automatic stay that enjoins a governmental entity from exercising its regulatory authority to collect a pre-petition debt. Additionally, in any bankruptcy liquidation or reorganization, secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. RAFs, late payment charges, and penalties owed by a company to the Florida Public Service Commission, as well as monetary settlements of cases resolving issues of failure to pay such fees, are not secured debts and, as a practical matter, are uncollectible in a bankruptcy proceeding where liquidation occurs. Therefore, this Commission would be prevented from collecting the RAFs owed by these companies, and from assessing and collecting a penalty for failure to pay the fees.

Our staff recently began monitoring companies that have previously filed for bankruptcy protection to further attempt collection of the past due RAFs. Monitoring is conducted using internet-based Public Access to Court Electronic Records (PACER). In many cases, companies under bankruptcy protection discontinue providing telecommunications services and close their operations; however, our staff are not able to take action to remove these companies from the Commission's Master Commission Directory (MCD) until the bankruptcy case is closed or permission to cancel is obtained from the bankruptcy court.

PACER indicates that Ciera Network, Systems filed for Chapter 7 bankruptcy protection in the US Bankruptcy Court-Texas Southern on August 28, 2003. The case was closed on November 9, 2010. All mail from this Commission is being returned by the US Postal Service marked "unable to forward" and the telephone numbers on file for the company have been reassigned to another customer. Our staff also researched the Florida Department of State, Division of Corporations' records, which show that the company's last Annual Report was filed on May 5, 2003, and its corporate status was subsequently revoked on October 1, 2004. Our staff researched the Federal Communications Commission's records and found no information for the company. Due to the company's Chapter 7 bankruptcy filing in 2003, the company did not accrue RAFs from 2003-2013. The company did incur statutory late payment charges in the years 2001, and 2002 for a total amount of \$6.00 (\$5.00 in penalties and \$1.00 in interest).

PACER indicates that Southern Telcom Network filed for Chapter 7 bankruptcy protection in the US Bankruptcy Court-Texas Southern on April 20, 2006. The case was closed on June 29, 2011. All mail from this Commission is being returned by the US Postal Service marked "unable to forward" and "return to sender," the telephone numbers on file for the company are no longer working numbers. Our staff researched the Florida Department of State, Division of Corporations' records, which showed that the company's last Annual Report was filed on May 5, 2006, and its corporate status was subsequently revoked on September 14, 2007. Our staff also researched the Federal Communications Commission's records and found a Form 499 record of the Chapter 7 bankruptcy protection and a statement the company was no longer active as of July 19, 2006. Due to the company's Chapter 7 bankruptcy filing in 2006, the company did not accrue Regulatory Assessment Fees from 2006-2013 or incur penalties and interest.

Although these companies' bankruptcy cases have closed, it clearly appears that they are no longer providing service in Florida and no longer exist. We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, and 364.285, Florida Statutes.

Accordingly, we shall cancel Ciera Network, Systems CLEC service schedules and remove its name from the MCD on this Commission's own motion, effective November 9, 2010, and we shall cancel Southern Telecom Network's CLEC service schedules and remove its name from the MCD on this Commission's own motion, effective June 29, 2011. In addition, any unpaid statutory late payment charges, or penalty and interest shall not be sent to the Florida Department of Financial Services for collection, and permission for this Commission to write off the uncollectible amount shall be requested.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Ciera Network, Systems Inc.'s CLEC Certificate No. 7229 and service schedules are cancelled and its name removed from the MCD, effective November 9, 2010. It is further

ORDERED by the Florida Public Service Commission that Southern Telecom Network, Inc.'s CLEC Certificate No. 7674 and service schedules are cancelled and its name removed from the MCD, effective June 29, 2011. It is further

ORDERED that each entity's unpaid statutory late payment charges, or penalty and interest, shall not be sent to the Department of Financial Services for collection. The Division of Administrative and Information Technology Services shall request permission to write-off the uncollectible amount. It is further

ORDERED that if Ciera Network, Systems Inc. and Southern Telecom Network, Inc.'s respective CLEC certificates and service schedules are cancelled and their names removed from the MCD in accordance with this Order, each entity shall immediately cease and desist providing telecommunications service in Florida. It is further

ORDERED that any protest to the action proposed herein shall specify the entity or entities to which it applies. It is further

ORDERED that if a protest to this Order is filed, the protest shall not prevent the action proposed herein from becoming final with regard to the remaining entities listed in this Order. 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, F.A.C., is received by the Office of Commission Clerk, 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 _____,
_____.

ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SMH

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 Office of Commission Clerk, 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.