

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation by Florida Public Service Commission of AAV Certificate No. 7612 and CLEC Certificate No. 7611 issued to Enron Telecommunications, Inc., effective 3/4/04.

DOCKET NO. 040211-TP  
ORDER NO. PSC-04-0372-PAA-TP  
ISSUED: April 7, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
LILA A. JABER  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING CANCELLATION OF ALTERNATIVE ACCESS VENDOR  
CERTIFICATE AND COMPETITIVE LOCAL EXCHANGE COMPANY  
CERTIFICATE DUE TO CHAPTER 11 BANKRUPTCY

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.

Enron Telecommunications, Inc. (Enron) currently holds Alternative Access Vendor (AAV) Certificate of Public Convenience and Necessity No. 7612, and Competitive Local Exchange (CLEC) Certificate of Public Convenience and Necessity No. 7611, issued by the Commission on October 20, 2000, authorizing the provision of AAV and CLEC services.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF of \$50 if the certificate 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. All entities that apply for certification receive a copy of our rules governing AAV and CLEC service.

We received notice that the company had filed for Chapter 11 bankruptcy protection. In addition, we received a letter from the company, which advised that it had no customers and

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requested cancellation of its two certificates and asked that any unpaid Regulatory Assessment Fees (RAFs) be written-off as no funds exist.

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)(4) 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. However, in this case, the company has requested cancellation of its certificate. 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 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.

Accordingly, we find it appropriate to cancel AAV Certificate No. 7612 and CLEC Certificate No. 7611, effective March 4, 2004. If Enron’s certificates are canceled in accordance with this Order, Enron shall immediately cease and desist providing Alternative Access Vendor services and Competitive Local Exchange services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.335, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Enron Telecommunications, Inc.'s Certificate No. 7612 to provide Alternative Access Vendor services and Certificate No. 7611 to provide Competitive Local Exchange services is hereby canceled, effective March 4, 2004. It is further

ORDERED that the outstanding Regulatory Assessment Fees should not be sent to the Comptroller’s Office 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 that if Enron Telecommunications, Inc.'s Certificate No. 7612 and Certificate No. 7611 is canceled in accordance with this Order, that entity shall immediately cease and desist providing Alternative Access Vendor services and Competitive Local Exchange 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

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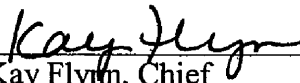
the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of April, 2004.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By:

  
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Kay Flynn, Chief  
Bureau of Records

( S E A L )

DRG

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.

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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 April 28, 2004.

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.