

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation by Florida  
Public Service Commission of CLEC  
Certificate No. 8604, issued to Pac-West  
Telecomm, Inc., effective March 19, 2013.

DOCKET NO. 20170217-TX  
ORDER NO. PSC-2018-0142-PAA-TX  
ISSUED: March 15, 2018

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
JULIE I. BROWN  
DONALD J. POLMANN  
GARY F. CLARK  
ANDREW GILES FAY

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.

Pac-West Telecomm, Inc. (Pac-West) currently holds competitive local exchange telecommunications services (CLEC) Certificate No. 8604, issued by the Commission on December 2, 2005.

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 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. 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.

This Commission monitors 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.

PACER indicates that Pac-West filed for Chapter 11 bankruptcy protection in the US Bankruptcy Court for the Western District of Texas – Austin Division on April 30, 2007. On December 8, 2011, the Federal Communications Commission granted a transfer of control of Pac-West Telecomm, Inc. to UPH Holdings, Inc., which is not certificated in Florida. The bankruptcy case was terminated on March 19, 2013. 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 are out of service. There has been no response for requests to update contact information and data requests from the Commission. Pac-West has not paid regulatory fees and penalties and interest in years 2013, 2014, 2015, 2016, and 2017. We have researched the Florida Department of State, Division of Corporations’ records, which show that the company’s last Annual Report was filed on April 26, 2012, and its corporate status was listed as “revoked for annual report” on September 27, 2013. It has no agent, and the last registered agent resigned on September 30, 2016. The Federal Communications Commission Form 499 Filer Database listed Pac-West Telecomm, Inc. as “(n)o longer active as of Jan 1, 2014.” It also stated “(a)ll assets of this company have been sold to another party.”

Pac-West’s bankruptcy case has closed, and it appears to no longer be providing service in Florida and to no longer exist. We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, 364.285, Florida Statutes.

Accordingly, we shall cancel Pac-West’s CLEC certificate, service schedule (if any), and remove its name from the Master Commission Directory on this Commission’s own motion, effective March 19, 2013. 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 Pac-West Telecomm, Inc.’s CLEC Certificate No. 8604 is cancelled and its status changed to “cancelled” in the Master Commission Directory, effective March 19, 2013. 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 Pac-West Telecomm, Inc.'s respective CLEC certificate and service schedule (if any) are cancelled and its status changed to "cancelled" in the Master Commission Directory in accordance with this Order, the entity shall immediately cease and desist providing 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, 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 15th day of March, 2018.



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HONG WANG  
Chief Deputy Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 April 5, 2018.

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.