

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: March 5, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Isler) *AI*
Office of the General Counsel (Morrow) *MS*

RE: Docket No. 080653-TX – Request for cancellation of CLEC Certificate No. 080640
by Reliant Communications, Inc., effective October 27, 2008.

AGENDA: 03/17/09 – 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\RCP\WP\080653.RCM.DOC

RECEIVED-FPSC
09 MAR -5 AM 11:03
COMMISSION
CLERK

Discussion of Issues

Issue 1: Should the Commission vacate Order No. PSC-09-0020-PAA-TX, issued on January 6, 2009, and grant the company a voluntary cancellation?

Recommendation: Yes, Order No. PSC-09-0020-PAA-TX should be vacated and the company should be granted a voluntary cancellation. (Isler, Morrow)

Staff Analysis: See attached proposed Order.

DOCUMENT NUMBER-DATE

01788 MAR-5 08

FPSC-COMMISSION CLERK

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If the company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If the company's CLEC certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing telecommunications service in Florida. If there is no protest, this docket should be closed upon issuance of the Consummating Order. (Morrow)

Staff Analysis: Staff recommends that the Commission take action as set forth in the foregoing staff recommendation statement.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for cancellation of CLEC
Certificate No. 6040 by Reliant
Communications, Inc., effective October 27,
2008.

DOCKET NO. 080653-TX
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER
VACATING ORDER NO. PSC-09-0020-PAA-TX AND CANCELLING COMPETITIVE
LOCAL EXCHANGE TELECOMMUNICATIONS COMPANY CERTIFICATE
VOLUNTARILY

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.

Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) for each certificate or registration if the certificate or registration 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. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due. In addition, Rule 25-24.820, Florida Administrative Code, provides that a company requesting cancellation of its CLEC certificate must state its intent and date to pay the current Regulatory Assessment Fee.

On October 27, 2008, this Commission received a letter dated October 17, 2008, from the Mr. Robert Sorrentino, President of Reliant Communications, Inc., requesting voluntary cancellation of competitive local exchange company (CLEC) Certificate No. 6040. On November 7, 2008, our staff e-mailed Mr. Sorrentino, attached the 2008 Regulatory Assessment Fee (RAF) return form, and advised that the 2008 RAF must be paid before going forward with a voluntary cancellation. No response was received.

On December 4, 2008, our staff filed its recommendation and on January 6, 2009, Order No. PSC-09-0020-PAA-TX was issued, which denied the company a voluntary cancellation and instead cancelled CLEC Certificate No. 6040 on this Commission's own motion. On January 6, 2009, Ms. Jennifer DePinto, representative of the company, contacted our staff and questioned why the company was denied a voluntary cancellation when it had paid the 2008 RAF. Our staff found that payment of the 2008 RAF was posted after the recommendation was filed and before the Commission voted on December 16, 2008. Therefore, vacating the proposed agency action order is appropriate.

Accordingly, we hold that Order No. PSC-09-0020-PAA-TX, issued on January 6, 2009, shall be vacated. In addition, the company's request for cancellation shall be deemed voluntary. The Commission is vested with jurisdiction over these matters pursuant to Sections 350.113, 364.336, 364.337, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-09-0020-PAA-TX, issued on January 6, 2009, is hereby vacated. It is further

ORDERED that CLEC Certificate No. 6040 held by Reliant Communications, Inc., is hereby voluntarily cancelled effective October 27, 2008. 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 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

(S E A L)
JLM

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.