

RECEIVED-FPSC

11 APR 14 AM 11:43

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: April 14, 2011

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (Earnhart) *2E RLT 26*
Office of the General Counsel (Evans) *AT*

RE: Docket No. 110025-TP – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 8489 and IXC Registration No. TK184, issued to CommPartners, LLC, effective December 31, 2010.

AGENDA: 04/26/11 – 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\RAD\WP\110025.RCM.DOC

Case Background

CommPartners, LLC currently holds competitive local exchange telecommunications company (CLEC) Certificate No. 8489, issued on August 4, 2004, and intrastate interexchange telecommunications (IXC) Registration No. TK184 issued on December 17, 2007.

Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) if the certificate or registration 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.

DOCUMENT NUMBER-DATE

02492 APR 14 =

FPSC-COMMISSION CLERK

Docket No. 110025-TP
Date: April 14, 2011

On January 11, 2011, this Commission received a letter dated January 5, 2011, from CommPartners, LLC's President, Mr. Gregory Roeper, stating that the company has no customers or facilities in Florida and requesting cancellation of the company's CLEC certificate and IXC registration. Our staff researched and found that CommPartners, LLC filed for Chapter 11 bankruptcy protection in the District of Nevada, on July 2, 2010, Bankruptcy Petition No. 10-20933.

On January 25, 2011, this Commission received a letter dated January 19, 2011, from the company's Regulatory Compliance Manager, Ms. Carol Lisowski, requesting a bankruptcy cancellation of the CLEC certificate and IXC registration because the company does not have funds available to pay the regulatory assessment fees.

This recommendation addresses CommPartners, LLC's request for bankruptcy cancellation of its CLEC Certificate and IXC Registration. We are vested with jurisdiction over this matter pursuant to Sections 350.113, 364.02, 364.285, 364.336, and 364.337, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant CommPartners, LLC, as set forth in Attachment A, cancellation of its competitive local exchange telecommunications company (CLEC) Certificate No. 8489 and intrastate interexchange telecommunication company (IXC) tariff, and remove the company's name from the IXC register, with an effective date of December 31, 2010, due to bankruptcy; direct the Division of Administrative Services to request permission from the Florida Department of Financial Services to write off any unpaid Regulatory Assessment Fees, including statutory late payment charges, instead of requesting collection services; and require the company to immediately cease and desist providing competitive local exchange and intrastate interexchange telecommunications services in Florida?

Recommendation: Yes, the Commission should grant CommPartners, LLC, as set forth in Attachment A, cancellation of its competitive local exchange telecommunications company (CLEC) Certificate No. 8489 and intrastate interexchange telecommunication company (IXC) tariff, and remove the company's name from the IXC register, with an effective date of December 31, 2010, due to bankruptcy; direct the Division of Administrative Services to request permission from the Florida Department of Financial Services to write off any unpaid Regulatory Assessment Fees, including statutory late payment charges, instead of requesting collection services; and require the company to immediately cease and desist providing competitive local exchange and intrastate interexchange telecommunications services in Florida. (Earnhart, Evans)

Staff Analysis: See attached proposed Order.

Issue 2: Should this docket be closed?

Recommendation: Yes, this docket should be closed if no protest is filed and upon issuance of a Consummating Order. (Evans)

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. This docket 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. 8489 and IXC Registration No. TK184, issued to CommPartners, LLC, effective December 31, 2010. | DOCKET NO. 110025-TP

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER
GRANTING CANCELLATION OF COMPETITIVE LOCAL EXCHANGE CERTIFICATE
AND INTRASTATE INTEREXCHANGE COMPANY
TARIFF AND REMOVAL FROM THE REGISTER DUE TO 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.

CommPartners, LLC currently holds competitive local exchange telecommunications company (CLEC) Certificate No. 8489, issued on August 4, 2004, and intrastate interexchange telecommunications (IXC) Registration No. TK184 issued on December 17, 2007.

Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) if the certificate or registration 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.

On January 11, 2011, this Commission received a letter dated January 5, 2011, from CommPartners, LLC's President, Mr. Gregory Roeper, stating that the company has no customers or facilities in Florida and requesting cancellation of the company's CLEC certificate and IXC registration. Our staff researched and found that CommPartners, LLC filed for Chapter

11 bankruptcy protection in the District of Nevada, on July 2, 2010, Bankruptcy Petition No. 10-20933.

On January 25, 2011, this Commission received a letter dated January 19, 2011, from the company's Regulatory Compliance Manager, Ms. Carol Lisowski, requesting a bankruptcy cancellation of the CLEC certificate and IXC registration because the company does not have funds available to pay the regulatory assessment fees.

The company has filed for bankruptcy, and pursuant to 11 USCS § 362 (a) (1) and (a) (2) of the US Bankruptcy Code, the filing of a petition for bankruptcy relief acts as an administrative action or proceeding against the debtor that was or could have commenced before the bankruptcy case or to enforce a judgment obtained before the bankruptcy case against the debtor.¹ 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 this company, and from assessing and collecting a penalty for failure to pay the fees. The company owes the 2010 RAFs, plus the statutory late payment charges, for both the CLEC and IXC .

We are vested with jurisdiction over this matter pursuant to Sections 350.113, 364.02, 364.285, 364.336, and 364.337, Florida Statutes. Accordingly, we hereby find that CommPartners, LLC's CLEC Certificate No. 8489 and IXC Registration No. TK184 shall be cancelled due to bankruptcy, effective December 31, 2010. In addition, any unpaid Regulatory Assessment Fees 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. CommPartners, LLC shall immediately cease and desist providing competitive local exchange and intrastate interexchange telecommunications services in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that CommPartners, LLC's Certificate No. 8489 to provide competitive local exchange telecommunications service is hereby cancelled, effective December 31, 2010, due to bankruptcy. It is further

ORDERED by the Florida Public Service Commission that CommPartners, LLC's IXC tariff Registration No. TK184, is hereby cancelled and CommPartners, LLC's name removed from the register to provide intrastate interexchange telecommunications service, effective December 31, 2010, due to bankruptcy. It is further

¹ See also 11 USCS § 362 (a) (6) which states that bankruptcy filing operates as a stay for any act, to collect, assess, or recover a claim that arose before the bankruptcy filing.

ORDERED that the outstanding Regulatory Assessment Fees, including accrued statutory late payment charges, shall not be sent to the Department of Financial Services for collection. The Division of Administrative Services, instead, shall request permission to write off the uncollectible amount. It is further

ORDERED that if CommPartners, LLC's CLEC certificate and IXC tariff are cancelled and its name removed from the register in accordance with this Order, it shall immediately cease and desist providing telecommunication 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 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 docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.