

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: May 2, 2013

TO: Office of Commission Clerk (Cole)

FROM: Office of Telecommunications (Earnhart, Casey) *2E*
Office of the General Counsel (Corbari, Teitzman) *AT*

RE: Docket No. 130066-TX – Bankruptcy cancellation by Florida Public Service Commission of Certificate of Necessity No. 8164, issued to Astro Tel, Inc., effective March 27, 2013.

AGENDA: 05/14/13 – 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\130066.RCM.DOC

Case Background

Astro Tel, Inc. (Astro Tel) currently holds local exchange telecommunications company Certificate No. 8164, issued on August 20, 2002.

On March 27, 2013, this Commission received a letter dated March 25, 2013, from the Company President, Mike Ray, stating that Astro Tel does not currently serve customers in Florida and requested cancellation of the company's certificate. Astro Tel's operating assets were sold to Birch Communications, Inc., holder of local exchange service company Certificate No. 7130, on April 11, 2012, in accordance with an order from US Bankruptcy Judge Michael Williamson. Astro Tel filed for Chapter 11 bankruptcy protection in the Middle District of

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Florida, on December 16, 2010, as documented in Bankruptcy Case Number 8:10-bk-29992 MGW. Astro Tel's operating assets were sold to Birch Communications, Inc., holder of local exchange company Certificate No. 7130, on April 11, 2012, in accordance with an order by United States Bankruptcy Court Judge, Michael G. Williamson.

In the March 25, 2013 letter, Mr. Ray requested a bankruptcy cancellation of the local exchange certificate because the company no longer has funds available to pay the Regulatory Assessment Fees (RAF) for 2012 or 2013.

Pursuant to Section 364.336, Florida Statutes (F.S.), telecommunications companies must pay a minimum annual RAF if the certificate or registration was active during any portion of the calendar year and late payment charges as outlined in Section 350.113, F.S., for any delinquent amounts.

This recommendation addresses Astro Tel's request for bankruptcy cancellation of its local exchange certificate. We are vested with jurisdiction over this matter pursuant to Chapter 364, F.S., and Section 350.113, F.S.

Discussion of Issues

Issue 1: Should the Commission grant Astro Tel, Inc., as set forth in Attachment A, cancellation of its local exchange telecommunications company Certificate No. 8164, with an effective date of March 27, 2013, due to bankruptcy; direct the Division of Administrative and Information Technology 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 local exchange services in Florida?

Recommendation: Yes, the Commission should grant Astro Tel, Inc., as set forth in Attachment A, cancellation of its local exchange telecommunications company Certificate No. 8164, with an effective date of March 27, 2013, due to bankruptcy; direct the Division of Administrative and Information Technology 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 services in Florida. (Earnhart, Corbari)

Staff Analysis: See attached proposed Order.

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Issue 2: Should this docket be closed?

Recommendation: Yes, this docket should be closed if no protest is filed within 21 days and upon issuance of a Consummating Order. (Corbari)

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: Docket No. 130066-TX – Bankruptcy
cancellation by Florida Public Service
Commission of Certificate of Necessity No.
8164, issued to Astro Tel, Inc., effective March
27, 2013. | DOCKET NO. 130066-TX

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
GRANTING CANCELLATION OF LOCAL EXCHANGE CERTIFICATE
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 (F.A.C.).

Astro Tel, Inc. (Astro Tel) currently holds local exchange telecommunications company Certificate No. 8164, issued on August 20, 2002.

On March 27, 2013, this Commission received a letter dated March 25, 2013, from the Company President, Mike Ray, stating that Astro Tel does not currently serve customers in Florida and requested cancellation of the company's certificate. Astro Tel filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Middle District of Florida, on December 16, 2010, as documented in Bankruptcy Case Number 8:10-bk-29992 MGW. Astro Tel's operating assets were sold to Birch Communications, Inc., holder of local exchange service company Certificate No. 7130, on April 11, 2012, in accordance with an order issued by United States Bankruptcy Court Judge Michael G. Williamson.

In Astro-Tel's March 25, 2013 letter, Mr. Ray requested a bankruptcy cancellation of the local exchange certificate because the company no longer has funds available to pay the

Regulatory Assessment Fees (RAF) for 2012 or 2013.

Astro Tel filed for bankruptcy, and pursuant to 11 U.S.C. § 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. 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. Astro Tel owes the 2012 Regulatory Assessment Fee (RAF), plus the statutory late payment charges and the 2013 RAF, for Certificate No. 8164.

We are vested with jurisdiction over this matter pursuant to Chapter 364, F.S., and Section 350.113, F.S. Pursuant to Section 364.336, F.S., telecommunications companies must pay a minimum annual 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, F.S., for any delinquent amounts.

Accordingly, we hereby find that Astro Tel's Certificate No. 8164, shall be cancelled due to bankruptcy, effective March 27, 2013. In addition, any unpaid RAFs shall be sent to the Florida Department of Financial Services to request permission for this Commission to write off the uncollectible amount.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Astro Tel's Certificate No. 8164 to provide local exchange telecommunications service is hereby cancelled, effective March 27, 2013, due to bankruptcy. It is further

ORDERED that the outstanding RAFs, including accrued statutory late payment charges, shall be sent to the Department of Financial Services. The Division of Administrative and Information Technology Services shall request permission to write off the uncollectible amount. It is further

ORDERED that if Astro Tel's certificate is cancelled 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, F.A.C., is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the

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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

(SEAL)

KFC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes (F.S.), to notify parties of any administrative hearing that is available under Section 120.57, F.S., 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, F.A.C. 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.