

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: June 4, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Telecommunications (Beard) *KS*
Division of Economics (Earnhart) *EA*
Office of the General Counsel (Hopkins) *SH* *KE* *W.D.* *WBM/ITE.*

RE: Docket No. 150095-TX – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 8518, issued to Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC, effective July 15, 2014.

Docket No. 150096-TX – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 8168 issued to Terra Telecommunications Corp., effective September 30, 2014.

Docket No. 150097-TX – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 8703 issued to StarVox Communications, Inc., effective January 28, 2014.

AGENDA: 06/18/15 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Discussion of Issues

Issue 1: Should the Florida Public Service Commission (FPSC or the Commission) cancel Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC (Tennessee

Date: June 4, 2015

Telephone), Terra Telecommunications Corp., (Terra Corp.) and StarVox Communications, Inc.'s (StarVox) competitive local exchange telecommunications company (CLEC) certificates, service schedules, and mark each company's name inactive in the Master Commission Directory (MCD) on its own motion effective the date each company's Chapter 7 Bankruptcy case terminated; direct the Division of Administrative and Information Technology Services (AIT) Technology Services to write-off any statutory late payment charges or penalty and interest instead of requesting collection services; and require the companies to immediately cease and desist providing telecommunications services in Florida?

Recommendation: Yes, each entity's CLEC certificate and service schedule should be cancelled and each company's name should be marked inactive in the MCD on the Commission's own motion due to bankruptcy as listed on Attachment A. Also AIT should write off any unpaid statutory late payment charges, or penalty and interest instead of requesting collection service. The companies should immediately cease and desist providing telecommunications services in Florida. (Beard, Hopkins)

Staff Analysis: See attached proposed Order.

Docket Nos. 150095-TX, 150096-TX, 150097-TX

Date: June 4, 2015

Issue 2: Should these dockets be closed?

Recommendation: Yes, these dockets should be closed if no protest is filed upon issuance of a Consummating Order. (Hopkins)

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 decisions files a protest within 21 days of the issuance of a Proposed Agency Action Order. A protest in one docket should not prevent the action in a separate docket from becoming final. These dockets 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. 8518, issued to Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC, effective July 15, 2014.

DOCKET NO. 150095-TX

In re: Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 8168 issued to Terra Telecommunications Corp., effective September 30, 2014.

DOCKET NO. 150096-TX

In re: Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 8703 issued to StarVox Communications, Inc., effective January 28, 2014.

DOCKET NO. 150097-TX
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
JULIE I. BROWN
JIMMY PATRONIS

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.

Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC (Tennessee Telephone) currently holds competitive local exchange telecommunications services (CLEC) Certificate No. 8518, issued by the Commission on October 11, 2004. Terra Telecommunications Corp. (Terra Corp.) currently holds CLEC Certificate No. 8168, issued by the Commission on August 19, 2002. StarVox Communications, Inc. (StarVox), currently holds CLEC Certificate No. 8703, issued by the Commission on December 14, 2007.

Pursuant to Section 364.336, Florida Statutes (F.S.), 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, F.S., 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 this 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 these companies, and from assessing and collecting a penalty for failure to pay the fees.

Our staff monitor 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, however, our staff are not able to take action to remove these companies from our Master Commission Directory (MCD) until the bankruptcy case is closed or permission to cancel is obtained from the bankruptcy court.

PACER indicates that Tennessee Telephone, filed for Chapter 7 bankruptcy protection in the US Bankruptcy Court – Middle District of Texas, Austin Division on August 4, 2010. The case was closed on July 15, 2014. Our staff researched the Florida Department of State, Division of Corporations' records, which show that the company's last Annual Report was filed on April 28, 2010, and its corporate status was subsequently revoked on September 23, 2011. Our staff also researched the Federal Communications Commission's (FCC) records and found a Form 499 Filer record from April 1, 2011. There was also a statement that read "while the company still exists it is no longer providing services as of October 31, 2010." Due to the company's Chapter 7 bankruptcy filing in 2010, the company did not accrue RAF charges from 2010-2014. However, the company does have outstanding RAF charges pending for the years 2009 and penalty and interest for a total amount of \$996.00 (\$600.00 in RAF charges and \$150.00 in penalties and \$246.00 in interest) that need to be requested to be written off.

PACER indicates that Terra Corp. filed for Chapter 7 bankruptcy protection in the Federal Court of Miami on February 22, 2005. The case was closed on September 30, 2014. Our staff researched the Florida Department of State, Division of Corporations' records, which showed that the company's last Annual Report was filed on February 4, 2004, and its corporate status was subsequently revoked on September 16, 2005. Our staff also researched the FCC records and found a Form 499 Filer record from April 1, 2004. There was also a statement that while the company still exists, it is no longer active as of July 15, 2005. Due to the company's Chapter 7 bankruptcy filing in 2005, the company did not accrue RAFs from 2005-2014 or incur penalties and interest.

PACER indicates that StarVox filed for Chapter 7 bankruptcy protection in the Northern District of California on March 26, 2008. The case was closed on January 28, 2014. Our staff researched the Florida Department of State, Division of Corporations' records, which showed that the company's last Annual Report was filed on April 30, 2007, and its corporate status was subsequently revoked on September 26, 2008. Our staff also researched the FCC's records and found a Form 499 record of the Chapter 7 bankruptcy protection and a statement the company was no longer active as of March 26, 2008. Due to the company's Chapter 7 bankruptcy filing in 2005, the company did not accrue Regulatory Assessment Fees from 2005-2014 or incur penalties and interest.

Although these companies' bankruptcy cases have closed, it appears that they are no longer providing service in Florida and no longer exist. We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, and 364.285, F.S.

Accordingly, we shall cancel Tennessee Telephone CLEC Certificate No. 8518, service schedules, and mark it inactive in the MCD on this Commission's own motion, effective July 15, 2014, and we shall cancel Terra Corp.'s CLEC Certificate No. 8168, service schedules, and mark it inactive in the MCD on this Commission's own motion, effective September 30, 2014, and we shall cancel StarVox's CLEC Certificate No. 8703, service schedules, and mark it inactive in the MCD on this Commission's own motion, effective January 28, 2014. 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 Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC's CLEC Certificate No. 8518 and service schedules are cancelled and its name marked inactive in the MCD, effective July 15, 2014. It is further

ORDERED by the Florida Public Service Commission that Terra Telecommunications Corp.'s CLEC Certificate No. 8168 and service schedules are cancelled and its name its name marked inactive in the MCD, effective September 30, 2014. It is further

ORDERED by the Florida Public Service Commission that StarVox Communications, Inc.'s CLEC Certificate No. 8703 and service schedules are cancelled and its name marked inactive in the MCD, effective January 28, 2014. 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 Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC's, Terra Telecommunications Corp., and StarVox Communications, Inc.'s respective CLEC Certificates and service schedules are cancelled and their names marked inactive in the MCD in accordance with this Order, each entity shall immediately cease and desist providing telecommunications service in Florida. It is further

ORDERED that any protest to the action proposed herein shall specify the entity or entities to which it applies. It is further

ORDERED that if a protest to this Order is filed, the protest shall not prevent the action proposed herein from becoming final with regard to the remaining entities listed in this Order. 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 ____ day
of _____, _____.

CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SMH

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.