

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: August 5, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Isler)
Office of the General Counsel (Rojas)

RE: Docket No. 040633-TP – Bankruptcy cancellation by Florida Public Service Commission of IXC Registration No. TJ123 and CLEC Certificate No. 5314 issued to North American Telecommunications Corporation d/b/a Southeast Telephone Company, effective 6/29/04.

AGENDA: 08/17/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040633.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission grant North American Telecommunications Corporation d/b/a Southeast Telephone Company cancellation of its CLEC certificate and IXC tariff and removal from the register with an effective date of June 29, 2004, due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that any unpaid Regulatory Assessment Fees, including statutory penalty and interest charges, should not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts; and require the company to immediately cease and desist providing competitive local exchange and interexchange telecommunications services in Florida?

Recommendation: Yes. (Isler; Rojas)

Staff Analysis: On May 22, 2001, the Commission was notified that this company had filed for Chapter 11 bankruptcy protection on February 23, 2001. The case was converted to a Chapter 7

bankruptcy proceeding on February 22, 2002. According to Commission records, this company has not paid the 2000, 2001, 2002, and 2003 Regulatory Assessment Fees, including statutory penalty and interest charges, for both certificates.

On June 21, 2004, staff wrote Ms. Michelle G. Gershfeld, Attorney for the Trustee, and explained that the company had not paid its Regulatory Assessment Fees since 1999 and asked Ms. Gershfeld to write the Commission a letter requesting cancellation of its CLEC certificate and IXC registration if the company no longer existed. On June 29, 2004, the Commission received Ms. Gershfeld's letter requesting cancellation of the company's CLEC certificate and removal from the register of its IXC registration. In addition, Ms. Gershfeld requested that any unpaid Regulatory Assessment Fees be written-off as the company had no funds to pay the fees. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, 364.337, and 364.285, Florida Statutes.

Interexchange and competitive local exchange companies are subject to Section 364.336, Florida Statutes, which requires payment of Regulatory Assessment Fees by January 30 of the subsequent year for telecommunications companies, and Section 364.285, Florida Statutes, which authorizes the Commission to impose penalties for failure to comply with a lawful rule or order of the Commission or any provision of Chapter 364, Florida Statutes, including the failure to pay RAFs.

In this case, however, the company has filed for bankruptcy, and pursuant to Section 362(b)(4) of the 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. Regulatory Assessment Fees, interest, and penalties owed by a company to the Florida Public Service Commission are not secured debts and, as a practical matter, are uncollectible in a bankruptcy proceeding where liquidation occurs. As such, the Commission would be prevented from collecting the RAFs owed by this company, and from assessing and collecting a penalty for failure to pay the RAFs.

Accordingly, staff recommends that the company be granted cancellation of its CLEC certificate and IXC tariff, that it be removed from the Commission's IXC register, and that any unpaid RAFs be written-off as uncollectible. In addition, the company should immediately cease and desist providing interexchange telecommunications services in Florida if it has not already done so.

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Issue 2: Should this docket be closed?

Recommendation: Yes. Staff recommends that 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. The docket should then be closed upon issuance of a Consummating Order. **(Rojas)**

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