

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-

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**DATE:** May 19, 2005

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

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

**RE:** Docket No. 050288-TX – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 7333 issued to Asset Channels-Telecom, Inc., effective April 11, 2005.

**AGENDA:** 05/31/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\050288.RCM.DOC

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#### Discussion of Issues

**Issue 1:** Should the Commission grant Asset Channels-Telecom, Inc. cancellation of its CLEC Certificate No. 7333 with an effective date of April 11, 2005, due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that any unpaid Regulatory Assessment Fees, including statutory late payment 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 service in Florida?

**Recommendation:** Yes. (Isler, Scott)

**Staff Analysis:** See attached proposed Order.

Docket No. 050288-TX

Date: May 19, 2005

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, if no protest is filed and upon issuance of a Consummating Order.  
(Scott)

**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. The 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. 7333 issued to Asset Channels- Telecom, Inc., effective April 11, 2005.	DOCKET NO. 050288-TX ORDER NO. ISSUED:
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON  
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION ORDER  
GRANTING CANCELLATION OF COMPETITIVE LOCAL EXCHANGE COMPANY  
CERTIFICATE DUE TO CHAPTER 11 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.

Asset Channels-Telecom, Inc. currently holds Certificate No. 7333 issued on March 2, 2000, authorizing the provision of competitive local exchange telecommunications (CLEC) service.

Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee of \$50 by January 30 of the subsequent year and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

On December 31, 2001, this Commission received notice that Asset Channels-Telecom, Inc. had originally filed for Chapter 11 bankruptcy protection on March 27, 2001, and that it was converted to a Chapter 7 on May 7, 2001, with the US Bankruptcy Court, District of Connecticut, New Haven Division. Several times, our staff attempted to obtain written correspondence from the company and the US Bankruptcy Trustee requesting cancellation if it no longer had need of its certificate.

On April 5, 2005, our staff received a telephone call from Mr. Barry Volante, former CEO of Asset Channels-Telecom, Inc. He stated that he had received a delinquent notice from

this Commission for nonpayment of the 2004 Regulatory Assessment Fee. He stated that his company has not existed since 2001. On April 11, 2005, this Commission received a letter from Mr. Volante requesting cancellation of the company's CLEC certificate and asking that the unpaid Regulatory Assessment Fees, including statutory late payment charges, be written-off as the company has no funds to pay the fees.

Asset Channels-Telecom, Inc. has filed for bankruptcy, and pursuant to Section 362(b)(5) 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. Regulatory Assessment Fees, 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 Regulatory Assessment Fees owed by this company, and from assessing and collecting a penalty for failure to pay the fees.

We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, 364.337, and 364.285, Florida Statutes. Accordingly, we hereby find that Asset Channels-Telecom, Inc. shall be granted cancellation of its CLEC Certificate No. 7333 due to bankruptcy, effective April 11, 2005. In addition, the 2000, 2001, 2002, 2003, 2004, and 2005 Regulatory Assessment Fees and the statutory late payment charges for the years 2000, 2001, 2002, 2003, and 2004, 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. Asset Channels-Telecom, Inc. shall immediately cease and desist providing competitive local exchange service in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Asset Channels-Telecom, Inc.'s Certificate No. 7333 to provide competitive local exchange telecommunications service is hereby cancelled, effective April 11, 2005, due to bankruptcy. It is further

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

ORDERED that if Asset Channels-Telecom, Inc.'s CLEC Certificate No. 7333 is cancelled in accordance with this Order, it shall immediately cease and desist providing competitive local exchange service 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 Director, Division of the Commission Clerk and Administrative Services, 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 \_\_\_\_\_, \_\_\_\_\_.

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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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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 Director, Division of the Commission Clerk and Administrative Services, 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.