

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: October 12, 2006

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

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

RE: Docket No. 060641-TP – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 5652 and IXC Registration No. TJ102 issued to NOW Communications, Inc., effective September 22, 2006.

AGENDA: 10/24/06 – 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\CMP\WP\060641.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission grant NOW Communications, Inc., as listed in Attachment A, cancellation of its IXC Registration No. TJ102 and tariff, and CLEC Certificate No. 5652 with an effective date of September 22, 2006, due to bankruptcy; notify the Division of the Commission Clerk and Administrative Services that any unpaid Regulatory Assessment Fees, including statutory late payment charges, should not be sent to the Florida Department of Financial Services for collection and request permission to write-off the uncollectible amounts; and require the company to immediately cease and desist providing intrastate interexchange telecommunications and competitive local exchange services in Florida?

Docket No. 050632-TP

Date: October 12, 2006

Recommendation: Yes, the company's IXC registration and CLEC certificate should be granted a bankruptcy cancellation with an effective date of September 22, 2006. (Isler, McKay)

Staff Analysis: See attached proposed Order.

Issue 2: Should this docket be closed?

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

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.

Date: October 12, 2006

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 5652 and IXC Registration No. TJ102 issued to NOW Communications, Inc., effective September 22, 2006.	DOCKET NO. 060641-TP ORDER NO. ISSUED:
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The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO R. ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION ORDER
GRANTING CANCELLATION OF INTRASTATE INTEREXCHANGE COMPANY
TARIFF AND REMOVAL FROM THE REGISTER AND 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.

NOW Communications, Inc. currently holds Registration No. TJ102, issued by the Commission on June 13, 1998, authorizing the provision of intrastate interexchange telecommunications company (IXC) service, and Certificate No. 5652 issued on June 13, 1998, 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 May 30, 2003, this Commission received notice that the company had filed for Chapter 11 bankruptcy protection on March 4, 2003. On September 22, 2006, this Commission received a letter from the company's President and CEO, Mr. Larry W. Seab, advising that

Date: October 12, 2006

Cleartel Telecommunications, Inc. had acquired NOW Communications, Inc.'s assets and that NOW Communications, Inc. had ceased operations in Florida. Mr. Seab requested cancellation of the company's IXC registration and CLEC certificate.

The company 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 NOW Communications, Inc. shall be granted cancellation of its IXC Registration No. TJ102 and CLEC Certificate No. 5652 due to Chapter 11 bankruptcy, effective September 22, 2006. In addition, the 2004, 2005, and 2006 Regulatory Assessment Fees for the IXC registration and the CLEC certificate, and the statutory late payment charges for the years 2004 and 2005 for the company's IXC registration and CLEC certificate, 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. NOW Communications, Inc. shall immediately cease and desist providing intrastate interexchange telecommunications and competitive local exchange services in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that NOW Communications, Inc.'s Registration No. TJ102 to provide intrastate interexchange telecommunications service is hereby cancelled, effective September 22, 2006, due to bankruptcy. It is further

ORDERED by the Florida Public Service Commission that NOW Communications, Inc.'s Certificate No. 5652 to provide competitive local exchange telecommunications service is hereby cancelled, effective September 22, 2006, 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 NOW Communications, Inc.'s Registration No. TJ102 and CLEC Certificate No. 5652 are cancelled in accordance with this Order, it shall immediately cease and desist providing intrastate interexchange company and competitive local exchange 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 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 _____, _____.

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.