

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: December 26, 2007

TO: Office of Commission Clerk (Cole)

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

RE: Docket No. 070647-TI – Bankruptcy cancellation by Florida Public Service Commission of IXC Registration No. TJ789 issued to Florida Phone Service, Inc., effective 10/31/07.

AGENDA: 01/08/08 – 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\070647a.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission grant Florida Phone Service, Inc., as listed in Attachment A, cancellation of its IXC tariff and remove its name from the register with an effective date of October 31, 2007, due to bankruptcy; notify the Division of 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 intrastate interexchange telecommunications service in Florida?

Docket No. 070647-TI
Date: December 26, 2007

REVISED 12/26/07

Recommendation: Yes, the company's IXC tariff and Registration No. TJ789 should be granted a bankruptcy cancellation with an effective date of October 31, 2007. (McKay, Isler)

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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation by Florida Public Service Commission of IXC Registration No. TJ789 issued to Florida Phone Service, Inc., effective 10/31/07.	DOCKET NO. 070647-TI ORDER NO. ISSUED:
---	--

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

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

Florida Phone Service, Inc. currently holds Registration No. TJ789, issued by the Commission on May 23, 2003, authorizing the provision of intrastate interexchange telecommunications (IXC) service.

Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee if the certificate was active during any portion of the calendar year and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

On June 19, 2007, this Commission received an e-mail from the company's representative, Lobsang Burgos, that Florida Phone Service, Inc. had ceased operations due to its bankruptcy filing, and requested cancellation of its IXC registration. Our staff researched this and found that the company filed for Chapter 11 bankruptcy protection on September 29, 2006, with the US Bankruptcy Court, Southern District of Florida (Miami), Case No. 06-14905.

The company has filed for bankruptcy, and pursuant to 11 USCS § 362 (b)(4) ~~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. The company owes the 2007 Regulatory Assessment Fee.

We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, and 364.285, Florida Statutes. Accordingly, we hereby find that Florida Phone Service, Inc.'s IXC Registration No. TJ789 shall be cancelled due to Chapter 11 bankruptcy, effective October 31, 2007. In addition, any outstanding Regulatory Assessment Fee 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. Florida Phone Service, Inc. shall immediately cease and desist providing intrastate interexchange telecommunications service in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Phone Service, Inc.'s Registration No. TJ789 to provide intrastate interexchange telecommunications service is hereby cancelled, effective October 31, 2007, due to bankruptcy. It is further

ORDERED that the outstanding Regulatory Assessment Fee shall not be sent to the Department of Financial Services for collection. The Division of Administrative Services, instead, shall request permission to write-off the uncollectible amount. It is further

ORDERED that if Florida Phone Service, Inc.'s IXC tariff is cancelled and its name removed from the register in accordance with this Order, it shall immediately cease and desist providing intrastate interexchange company 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 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 _____, _____.

ANN COLE
Commission Clerk

(S E A L)

VM

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.