

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: March 5, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Isler)
Office of the General Counsel (McKay)

RE: Docket No. 090036-TP – Request for cancellation of CLEC Certificate No. 8669, and for acknowledgment of cancellation of IXC Registration No. TK117 held by Cost Plus Communications, LLC, effective December 31, 2008.

AGENDA: 03/17/09 – 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\RCP\WP\090036.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny Cost Plus Communications, LLC, a voluntary cancellation of its CLEC Certificate No. 8669 and IXC Registration No. TK117 and cancel the tariff and remove the company's name from the register on the Commission's own motion with an effective date of December 31, 2008?

Recommendation: Yes, the company should be denied voluntary cancellations as listed on Attachment A. (Isler, McKay)

Staff Analysis: See attached proposed Order.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If the company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If the company pays the Regulatory Assessment Fees, including applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's competitive local exchange telecommunications certificate and intrastate interexchange carrier tariff and the removal of its name from the register will be voluntary. If the company fails to pay the Regulatory Assessment Fees, including applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, then the company's competitive local exchange telecommunications certificate and intrastate interexchange carrier tariff should be cancelled administratively and its name removed from the IXC register, and the collection of the past due Regulatory Assessment Fees should be referred to the Florida Department of Financial Services for further collection efforts. If the company's competitive local exchange telecommunications certificate and intrastate interexchange carrier tariff are cancelled and its name removed from the register in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing telecommunications service in Florida. This docket should be closed administratively either upon receipt of payment of the Regulatory Assessment Fees, including applicable late payment charges, or upon cancellation of the company's competitive local exchange telecommunications certificate and intrastate interexchange carrier tariff and removal of its name from the register. (McKay)

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

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for cancellation of CLEC
Certificate No. 8669, and for acknowledgment
of cancellation of IXC Registration No. TK117
held by Cost Plus Communications, LLC,
effective December 31, 2008.

DOCKET NO. 090036-TP
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
CANCELLING COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS
COMPANY CERTIFICATE AND INTRASTATE INTEREXCHANGE CARRIER TARIFF
AND REGISTRATION 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.

Cost Plus Communications, LLC currently holds Certificate No. 8669, issued on March 21, 2007, authorizing the provision of competitive local exchange telecommunications service (CLEC), and intrastate interexchange telecommunications (IXC) Registration No. TK117 issued on November 20, 2006. Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) for each certificate or registration if the certificate or registration was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due. In addition, Rule 25-24.820, Florida Administrative Code, provides that a company requesting cancellation of its CLEC certificate must state its intent and date to pay the current Regulatory Assessment Fee. Rule 25-24.474, Florida Administrative Code, provides that an intrastate interexchange company must pay any current and past due Regulatory Assessment Fees with its request for cancellation.

On January 21, 2009, this Commission received a letter from the company's attorney, Mr. Patrick D. Crocker with Crocker & Crocker, PC. The letter requested cancellation of the company's certificate and registration as it had no customers in Florida. Our staff contacted Mr. Crocker and explained that in order to be granted a voluntary cancellation, the 2008 RAFs needed to be paid for both the IXC registration and the CLEC certificate. The 2008 RAFs, along with accrued late payment charges, remain unpaid for both the registration and certificate.

For the reasons described above, we deny Cost Plus Communications, LLC's request for voluntary cancellation of its CLEC certificate and IXC tariff and removal of its name from the register. However, we find it appropriate to involuntarily cancel the CLEC certificate and the IXC tariff and remove the company's name from the register, effective December 31, 2008, on this Commission's own motion for failure to comply with Rules 25-24.820 and 25-24.474, Florida Administrative Code, and pursuant to Section 364.336, Florida Statutes.

The cancellation of the CLEC certificate and IXC tariff and removal of its name from the register, in no way diminishes the entity's obligation to pay the applicable RAFs, including applicable late payment charges. If this Order is not protested, the company's CLEC Certificate No. 8669 and IXC tariff shall be cancelled and its name removed from the register, effective December 31, 2008. If the company pays the RAFs, including applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's CLEC certificate and IXC tariff and removal of its name from the register shall be voluntary. If the company fails to protest the Order or pay the RAFs, including applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, then the company's CLEC certificate and IXC tariff shall be cancelled administratively and its name removed from the register. The collection of the past due RAFs shall be referred to the Florida Department of Financial Services for further collection efforts. If the company's CLEC certificate and IXC tariff are cancelled and its name removed from the register in accordance with this Order, the company shall be required to immediately cease and desist providing telecommunications service in Florida. This docket shall be closed administratively either upon receipt of the payment of the RAFs, including applicable late payment charges, or upon cancellation of the company's CLEC certificate and IXC tariff and removal of its name from the register. If Cost Plus Communications, LLC's CLEC certificate and IXC tariff are cancelled and its name removed from the register on this Commission's own motion and it subsequently decides to reapply for a certificate as a telecommunications company, Cost Plus Communications, LLC shall be required to first pay any outstanding fees, including accrued statutory late payment charges. We are vested with jurisdiction over these matters pursuant to Sections 350.113, 364.336, 364.337, 364.02, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that pursuant to Rule 25-24.820, Florida Administrative Code, Cost Plus Communications, LLC's CLEC Certificate No. 8669 is hereby cancelled effective December 31, 2008, on this Commission's own motion for failure to pay the 2008 Regulatory Assessment Fee, including accrued late payment charges, pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that pursuant to Rule 25-24.474, Florida Administrative Code, Cost Plus Communications, LLC's IXC tariff and Registration No. TK117 is hereby cancelled and its name removed from the register effective December 31, 2008, on this Commission's own motion for failure to pay the 2008 Regulatory Assessment Fee, including accrued late payment charges, pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the cancellation of the certificate and tariff and removal of its name from the register in no way diminishes Cost Plus Communications, LLC's obligation to pay the applicable Regulatory Assessment Fees, including applicable late payment charges. If the company's CLEC certificate and IXC tariff are cancelled and its name removed from the register and the company subsequently decides to reapply for a certificate/registration as a telecommunications company, that company shall be required to first pay any outstanding fees, including accrued statutory late payment charges. It is further

ORDERED that if Cost Plus Communications, LLC pays the Regulatory Assessment Fees, including applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, the cancellation of the certificate/registration shall be deemed voluntary. It is further

ORDERED that if Cost Plus Communications, LLC does not pay the Regulatory Assessment Fees, including applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, the collection of the Regulatory Assessment Fees shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if Cost Plus Communications, LLC's CLEC certificate and IXC tariff are cancelled and its name removed from the register in accordance with this Order, Cost Plus Communications, LLC shall immediately cease and desist providing telecommunications 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 administratively either upon receipt of payment of the Regulatory Assessment Fees, including any late payment charges, or upon cancellation of the company's competitive local exchange telecommunications certificate and intrastate interexchange carrier tariff and removal of its name from the register.

By ORDER of the Florida Public Service Commission this ____ day of _____, _____.

ANN COLE
Commission Clerk

(S E A L)
VSM

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.