

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: May 20, 2009

TO: Office of Commission Clerk (Cole)

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

RE: Docket No. 090128-TP – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 5656 and IXC Registration No. TI307, issued to Touch 1 Communications, Inc., effective March 9, 2009.

Docket No. 090129-TP – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 5701 and IXC Registration No. TJ128, issued to Trinsic Communications, Inc., effective March 9, 2009.

AGENDA: 06/02/09 – 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\090128.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission cancel Touch 1 Communications, Inc. and Trinsic Communications, Inc.'s CLEC Certificates and IXC tariffs and remove each company's name from the register on the Commission's own motion due to bankruptcy with an effective date of March 9, 2009; direct the Division of Administrative Services to request permission from the Florida Department of Financial Services to write off any unpaid Regulatory Assessment Fees,

including statutory late payment charges, instead of requesting collection services; and require the companies to immediately cease and desist providing telecommunications service in Florida?

Recommendation: Yes, each entity's CLEC certificate and IXC tariff and registration should be cancelled on the Commission's own motion due to bankruptcy as listed on Attachment A. (Isler, Brooks)

Staff Analysis: See attached proposed Order.

Issue 2: Should these dockets be closed?

Recommendation: Yes, these dockets should be closed if no protest is filed and upon issuance of a Consummating Order. (Brooks)

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. A protest in one docket should not prevent the action in a separate docket from becoming final. These dockets 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. 5656 and IXC Registration No. TI307, issued to Touch 1 Communications, Inc., effective March 9, 2009.	DOCKET NO. 090128-TP
In re: Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 5701 and IXC Registration No. TJ128, issued to Trinsic Communications, Inc., effective March 9, 2009.	DOCKET NO. 090129-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 CERTIFICATES AND INTRASTATE INTEREXCHANGE CARRIER TARIFFS
AND REGISTRATIONS DUE TO 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.

Touch 1 Communications, Inc. currently holds competitive local exchange telecommunications service (CLEC) Certificate No. 5656, issued on June 30, 1998, and intrastate interexchange telecommunications (IXC) Registration No. TI307 issued on December 23, 1994. Trinsic Communications, Inc. currently holds CLEC Certificate No. 5701, issued on September 22, 1998, and IXC Registration No. TJ128 issued on October 13, 1998.

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 March 6, 2009, our staff received a letter via e-mail from Mr. Eric A. French with Schiff Hardin, LLP. Mr. French is Special Tax Counsel to the attorney (Richard M. Gaal) to the Chapter 7 Bankruptcy Trustee Michael C. Reibling. The letter advised that the companies filed for Chapter 11 bankruptcy on February 7, 2007 and that it was converted to a Chapter 7 liquidation on April 24, 2007. This information was confirmed by our staff through PACER. On March 9, 2009, this Commission received a letter from Ms. Joyace H. Lopez on behalf of Mr. French requesting cancellation of each company's IXC registration and CLEC certificate and asked that any unpaid Regulatory Assessment Fees be written off due to the Chapter 7 bankruptcy proceeding.

Pursuant to 11 USCS § 362 (b)(4) 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 RAFs owed by these companies, and from assessing and collecting a penalty for failure to pay the fees. Touch 1 Communications, Inc.'s IXC owes the 2007, 2008, and 2009 RAFs plus statutory late payment charges for the years 2001, 2004, 2005, 2007, and 2008, and its CLEC owes the 2006, 2007, 2008, and 2009 RAFs plus statutory late payment charges for the years 2006, 2007, and 2008. Trinsic Communications, Inc.'s IXC owes the 2007, 2008, and 2009 RAFs plus statutory late payment charges for the years 2006, 2007, and 2008, and its CLEC owes the 2007, 2008, and 2009 RAFs plus statutory late payment charges for the years 2006, 2007, and 2008.

We are vested with jurisdiction over this matter pursuant to Sections 350.113, 364.336, 364.337, 364.02, and 364.285, Florida Statutes. Accordingly, we shall cancel Touch 1 Communications, Inc. and Trinsic Communications, Inc.'s CLEC certificates and IXC tariffs and remove each entity's name from the register on this Commission's own motion, effective March 9, 2009. In addition, any unpaid Regulatory Assessment Fees 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Touch 1 Communications, Inc.'s CLEC certificate and IXC tariff is cancelled and its name removed from the register, effective March 9, 2009. It is further

ORDERED that Trinsic Communications, Inc.'s CLEC certificate and IXC tariff is cancelled and its name removed from the register, effective March 9, 2009. It is further

ORDERED that each entity's unpaid Regulatory Assessment Fees 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 Touch 1 Communications, Inc. and Trinsic Communications, Inc.'s respective CLEC certificates and IXC tariffs are cancelled and their names removed from the register in accordance with this Order, that entity shall immediately cease and desist providing telecommunications service in Florida. It is further

ORDERED that any protest to the action proposed herein shall specify the entity or entities to which it applies. It is further

ORDERED that if a protest to this Order is filed, the protest shall not prevent the action proposed herein from becoming final with regard to the remaining entities listed in this Order. 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, these dockets shall be closed.

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

ANN COLE
Commission Clerk

(S E A L)

TJB

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.