

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: July 1, 2009

TO: Office of Commission Clerk (Cole)

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

RE: Docket No. 090325-TI – Bankruptcy cancellation by Florida Public Service Commission of IXC Registration No. TK081, issued to USD CLEC, Inc., effective June 5, 2009.

AGENDA: 07/14/09 – 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\090325.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission grant USD CLEC, Inc., as listed in Attachment A, cancellation of its IXC tariff and remove its name from the register with an effective date of June 5, 2009, due to bankruptcy; 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 company to immediately cease and desist providing telecommunications service in Florida?

Recommendation: Yes, the company should be granted a bankruptcy cancellation of its IXC tariff and Registration No. TK081 with an effective date of June 5, 2009. (Isler, McKay)

Docket No. 090325-TI

Date: July 1, 2009

Staff Analysis: See attached proposed Order.

Issue 2: Should this docket be closed?

Recommendation: Yes, this docket should be closed 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. TK081, issued to USD CLEC, Inc., effective June 5, 2009.	DOCKET NO. 090325-TI ORDER NO. ISSUED:
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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 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.

USD CLEC, Inc. currently holds Intrastate Interexchange Telecommunications Carrier (IXC) Registration No. TK081. USD CLEC, Inc. filed for Chapter 11 bankruptcy protection with the U.S. Bankruptcy Court, Northern District of New York on October 3, 2008.

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 5, 2009, this Commission received a letter dated June 4, 2009, from the company's attorney, Ms. Melissa Conway of Kelley, Drye & Warren. The letter advised that the bankruptcy court had approved that certain assets be sold to Warwick Valley Mobile Telephone Company, which sale was consummated on April 24, 2009. The letter stated that the company no longer provides any telecommunications service and any service previously provided in Florida was unregulated. On June 15, 2009, this Commission received a follow up letter from Ms. Conway advising the dissolution of the company is pending the bankruptcy court's approval.

The letter advised that the company has no funds to pay the unpaid Regulatory Assessment Fees (RAFs) and requested that the Commission write off the unpaid RAFs.

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 this company, and from assessing and collecting a penalty for failure to pay the fees.¹ The company owes the 2008 and 2009 RAFs and accrued late payment charges.

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 USD CLEC, Inc.'s IXC Registration No. TK081 shall be cancelled due to bankruptcy, effective June 5, 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. USD CLEC, Inc. shall immediately cease and desist providing intrastate interexchange telecommunications services in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that USD CLEC, Inc.'s Registration No. TK081 to provide intrastate interexchange telecommunications service is hereby cancelled, effective June 5, 2009, due to bankruptcy. It is further

ORDERED that the outstanding Regulatory Assessment Fees, including accrued statutory late payment charges, 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 USD CLEC, 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 telecommunication 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 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

¹ Staff notes that the deadline for filing claims with the bankruptcy court has passed.

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)

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.