

State of Florida



Public Service Commission  
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION  
CLERK

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DATE: JULY 11, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (ELLIOTT) *JAE Dic*  
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER; *PJC*  
MCCOY) *mm*

RE: DOCKET NO. 010696-TC - CANCELLATION BY FLORIDA PUBLIC  
SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 7418  
ISSUED TO ALPHA TEL-COM, INC. FOR VIOLATION OF RULE 25-  
4.0161, F.A.C., REGULATORY ASSESSMENT FEES;  
TELECOMMUNICATIONS COMPANIES.

DOCKET NO. 020380-TC - APPLICATION FOR CERTIFICATE TO  
PROVIDE PAY TELEPHONE SERVICE BY ALPHA TEL-COM, INC.

AGENDA: 07/23/02 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\010696.RCM

CASE BACKGROUND

On December 12, 2000, Alpha Tel-Com, Inc. (Alpha) was mailed  
the 2000 Regulatory Assessment Fee (RAF) Return Notice and payment  
was due by January 30, 2001. On February 21, 2001, the Division of  
the Commission Clerk & Administrative Services mailed a delinquent  
notice for the 2000 RAF.

On September 13, 2001, after the docket was opened, Alpha paid  
the past due amounts in full and proposed a settlement to resolve  
the docket. Order No. PSC-01-2425-AS-TC, which accepted the  
company's \$100 settlement proposal, was issued on December 14, 2001.

FPSC-COMMISSION CLERK

DOCUMENT # 010696-TC-001  
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the docket. Order No. PSC-01-2425-AS-TC, which accepted the company's \$100 settlement proposal, was issued on December 12, 2001. According to the Order, the company had until December 26, 2001, to pay the \$100 contribution. When payment was apparently not received, the company's certificate was administratively cancelled effective December 28, 2001.

On April 29, 2002, the Commission received correspondence dated April 24, 2002, along with payment of the \$100 settlement for the 2000 RAFs, as well as the 2001 RAFs, with associated statutory penalties and interest charges. In the letter dated April 24, 2002, the company explains that it had filed for bankruptcy on August 24, 2001, which was prior to the Commission issuance of Order No. PSC-01-2425-AS-TC. The Commission also received a \$100 application fee and a new application for a pay telephone (PATS) certificate. Docket No. 020380-TC was opened on April 29, 2002, to process Alpha's application.

Although the company has applied for another certificate, the company now contends that the Commission should not have cancelled its certificate for non-payment of the settlement approved by Order No. PSC-01-2425-AS-TC, because the company was in bankruptcy at the time the settlement was offered and when it was accepted by the Commission. Staff notes that at the time the settlement was approved, the company did not indicate that it was in bankruptcy, nor was the Commission in receipt of a bankruptcy notice from the court. Staff received a copy of the bankruptcy notice on May 9, 2002, when it was faxed by Ms. Michele Pedraita and a copy of the notice was later sent to the Office of the General Counsel by the company's attorney. On May 10, 2002, staff requested that Docket No. 010696-TC be reopened upon receipt of documentation of the ongoing bankruptcy proceedings.

The Commission has jurisdiction in this matter pursuant to Sections 364.336, 364.285, and 364.3375, Florida Statutes.

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**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission vacate in part Order No. PSC-01-2425-AS-TC in regard to the administrative cancellation of Alpha Tel-Com, Inc.'s Pay Telephone Certificate No. 7418?

**RECOMMENDATION:** Yes, the Commission should vacate in part Order No. PSC-01-2425-AS-TC in regard to the administrative cancellation of Alpha Tel-Com, Inc.'s Pay Telephone Certificate No. 7418. If staff's recommendation is approved and Alpha's Certificate No. 7418 is reinstated, then Docket No. 020380-TC should be closed because the application will be rendered moot.

**STAFF ANALYSIS:** Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of regulatory assessment fees by January 30, or the next business day, of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

This docket was established for nonpayment of the 2000 RAF, plus statutory penalty and interest charges. On December 12, 2001, Order No. PSC-01-2425-AS-TC was issued which accepted the company's \$100 settlement proposal. The company had until December 26, 2001 to pay the \$100 contribution. No payment was received; therefore, the company's certificate was administratively cancelled effective December 28, 2001. On April 24, 2002, the Commission received notice that Alpha Tel-Com, Inc. had filed for Chapter 11 bankruptcy protection on August 24, 2001.

Chapter 11 of Section 109 of the Federal Bankruptcy Code provides for reorganization by business entities. The filing of a bankruptcy petition under Chapter 11 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Section 362 (b) (5) provides that, for governments, the filing of the petition does not operate as a stay "of the enforcement of a judgement, other than a money judgement, obtained in an actual proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." (emphasis added) Thus, it would appear that we are not enjoined from exercising our police powers to protect public health, safety and welfare, but are enjoined from exercising our regulatory authority to collect a

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debt or engage in other economic regulation. The Automatic Stay is applicable to the settlement offer since the offer is a resolution of the 2000 RAF, which is a pre-petition charge. Staff emphasizes that on April 29, 2002, the Commission received payment of the \$100 settlement and the 2001 Regulatory Assessment Fee including penalty and interest. Alpha Tel-Com, Inc. is now current with all payment owed to the Commission.

Therefore, staff believes the Commission should vacate in part Order No. PSC-01-2425-PAA-TC, in regard to the administrative cancellation of Alpha's pay telephone Certificate No. 7418, reinstating Alpha Tel-Com, Inc.'s certificate.

If staff's recommendation is approved and Alpha's Certificate No. 7418 is reinstated, then Docket No. 020380-TC should be closed because the application will be rendered moot.

**ISSUE 2:** Should these dockets be closed?

**RECOMMENDATION:** Yes, if staff's recommendation is approved, these dockets should be closed upon issuance of the Commission's Order.

**STAFF ANALYSIS:** If staff's recommendation is approved these dockets should be closed upon issuance of the Commission's Order.