



Public Service Commission  
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**DATE:** JUNE 6, 2002

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

**FROM:** DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pj*  
OFFICE OF THE GENERAL COUNSEL (DODSON) *HW BK*

**RE:** DOCKET NO. 020394-TC - BANKRUPTCY CANCELLATION BY FLORIDA  
PUBLIC SERVICE COMMISSION OF PATS CERTIFICATE NO. 5012  
ISSUED TO CRESCENT PUBLIC COMMUNICATIONS, INC., EFFECTIVE  
4/30/02.

**AGENDA:** 06/18/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\020394.RCM

CASE BACKGROUND

- 12/27/96 - This company obtained Florida Public Service Commission Pay Telephone Certificate No. 5012.
- 02/08/99 - The Commission received the company's payment for the 1998 Regulatory Assessment Fee (RAF) and reported revenues in the amount of \$427,177 for the period ended December 31, 1998.
- 07/31/00 - Docket No. 000999-TC was established for nonpayment of the 1999 RAF. On October 2, 2000, Order No. PSC-00-1795-PAA-TC was issued, which imposed a \$500 penalty or cancelled the company's certificate. The company had until October 23, 2000 to respond to the Order. On October 13, 2000, the Commission received a letter from the company's attorney, which advised the company had filed for Chapter 11 bankruptcy

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protection (Case No. 99B10183-AJG). Based on this information, Docket No. 000999-TC was put on monitor status and the Consummating Order was not issued. On April 2, 2001, Order No. PSC-01-0852-FOF-TC was subsequently issued, which vacated Order No. PSC-00-1795-PAA-TC and left the company's certificate active.

- **03/26/02** - The Commission received an application for a pay telephone certificate in the name of Crescent Telephone Company, Inc. (Docket No. 020266-TC).
- **04/18/02** - Staff faxed a note to Mr. Peter Lubitz, Crescent Public Communications, Inc.'s bankruptcy attorney, and explained that a docket had been established for a company with a similar name. Staff asked Mr. Lubitz if bankruptcy proceedings had been completed and if Crescent Public Communications, Inc. still wished to keep its pay telephone certificate active.
- **04/30/02** - Mr. Lubitz responded via e-mail and advised that although Crescent Public Communications, Inc. still existed and that Chapter 11 bankruptcy proceedings were continuing, the company determined that it did not wish to keep its certificate active because it had sold its operating assets on September 10, 1999, and was not conducting business in Florida.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.3375, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant Crescent Public Communications, Inc.'s request for cancellation of its Pay Telephone Certificate No. 5012 due to bankruptcy?

**RECOMMENDATION:** Yes. The Commission should grant the company a bankruptcy cancellation of its Pay Telephone Certificate No. 5012 with an effective date of April 30, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 1999, 2000, 2001, and 2002 RAFs, including statutory penalty and interest charges for the years 1998, 1999, 2000, and 2001, should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write-off the uncollectible amount should be requested. If the certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing pay telephone service in Florida. (Isler; Dodson)

**STAFF ANALYSIS:** Rule 25-24.514, Florida Administrative Code, establishes the requirements for cancellation of pay telephone certificates. However, 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 judgment, other than a money judgment, 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 seeking to collect a debt. However, in this case, the Company has requested cancellation of its certificate. Under those circumstances, this Commission is free to do so.

Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of regulatory assessment fees by January 30 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.

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On July 31, 2000, staff established Docket No. 000999-TC for nonpayment of the 1999 RAF. On October 2, 2000, Order No. PSC-00-1795-PAA-TC was issued, which imposed a \$500 fine or cancelled the company's certificate. On October 13, 2000, the Commission received notice that Crescent Public Communications, Inc. had filed for Chapter 11 bankruptcy protection. Therefore, Docket No. 000999-TC was put on monitor status and the Consummating Order was not issued. On April 2, 2001, Order No. PSC-01-0852-FOF-TC was issued, which vacated Order No. PSC-00-1795-PAA-TC and left the company's certificate active.

On March 26, 2002, the Commission received an application for a pay telephone certificate from a company with a similar name. A representative with the new company, Crescent Telephone Company, Inc., advised staff that it had purchased the assets of Crescent Public Communications, Inc. back in 1999, but that the two companies were not otherwise related. On April 18, 2002, staff contacted Crescent Public Communications, Inc.'s bankruptcy attorney, Mr. Peter Lubitz. Mr. Lubitz advised that Crescent Public Communications, Inc. had sold its operating assets to Crescent Telephone Company, Inc. on September 10, 1999. In addition, Mr. Lubitz advised that although Crescent Public Communications, Inc. still existed and that its Chapter 11 bankruptcy case was still continuing, the company did not wish to keep its certificate active since it was not operating in the state.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its Pay Telephone Certificate No. 5012 with an effective date of April 30, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 1999, 2000, 2001, and 2002 RAFs, including statutory penalty and interest charges for the years 1998, 1999, 2000, and 2001, should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write-off the uncollectible amount should be requested. If the certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing pay telephone service in Florida.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** 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. (Dodson)

**STAFF ANALYSIS:** Whether staff's recommendation on Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon issuance of a Consummating Order.