

State of Florida



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

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COMMISSION CLERK

DATE: FEBRUARY 20, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji*
OFFICE OF THE GENERAL COUNSEL (MCKAY) *VS m 2/14*

RE: DOCKET NO. 030073-TC - BANKRUPTCY CANCELLATION BY FLORIDA
PUBLIC SERVICE COMMISSION OF PATS CERTIFICATE NO. 783
ISSUED TO ELCOTEL, INC., EFFECTIVE 12/31/02.

AGENDA: 03/04/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030073.RCM

CASE BACKGROUND

- 03/28/86 - This company obtained Florida Public Service Commission Pay Telephone (PAT) Certificate No. 783.
- 01/23/01 - The Commission received notice that this company had filed for Chapter 11 bankruptcy protection.
- 01/22/02 - The Commission received the company's payment for the 2001 Regulatory Assessment Fee (RAF) and reported revenues in the amount of \$28,554 for the period ended December 31, 2001.
- 01/17/03 - The Commission received a letter from the company's bankruptcy trustee advising that due to the bankruptcy, the company had sold its assets and liquidated its business on December 31, 2001. In addition, the company requested cancellation of its PAT certificate.

DOCUMENT NUMBER-DATE

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- **02/03/03** - As of this date, there are no outstanding consumer complaints against Elcotel, Inc.

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 Elcotel, Inc.'s request for cancellation of its PAT Certificate No. 783 due to bankruptcy?

RECOMMENDATION: Yes. The Commission should grant the company a bankruptcy cancellation of its PAT Certificate No. 783 with an effective date of December 31, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2002 RAF and 1997 penalty and interest charges should not be sent to the Florida Department of Financial Services 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 services in Florida. (Isler; McKay)

STAFF ANALYSIS: Rule 25-24.514, Florida Administrative Code, establishes the requirements for cancellation of telecommunications 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, incorporated by Rule 25-24.505, 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 January 23, 2001, the Commission received notice that Elcotel, Inc. had filed for Chapter 11 bankruptcy protection. On January 17, 2003, the Commission received a letter from Mr. William H. Thompson, Trustee for Elcotel, Inc., which advised that the company sold its assets and liquidated its business on December 31, 2001, and requested cancellation of its PAT certificate. In addition, the company stated that it did not have any resources to pay the 2002 Regulatory Assessment Fee.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its PAT Certificate No. 783 with an effective date of December 31, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2002 RAF and 1997 penalty and interest charges should not be sent to the Florida Department of Financial Services 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 services in Florida.

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.
(McKay)

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.