

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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DATE: APRIL 24, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Aji*
OFFICE OF THE GENERAL COUNSEL (J. ROJAS) *AR*

RE: DOCKET NO. 030273-TC - BANKRUPTCY CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PATS CERTIFICATE NO. 7418 ISSUED TO ALPHA TEL-COM, INC., EFFECTIVE 3/17/03.

AGENDA: 05/06/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030273.RCM

CASE BACKGROUND

- 05/10/00 - This company obtained Florida Public Service Commission Pay Telephone (PAT) Certificate No. 7418.
- 05/09/02 - The Commission received notice that this company had filed for Chapter 11 bankruptcy protection during proceedings in Docket No. 010696-TC. Docket No. 010696-TC was established on May 7, 2001, for nonpayment of the 2000 Regulatory Assessment Fee (RAF). The company paid the fee, including statutory penalty and interest charges, on May 31, 2001. On December 12, 2001, Order No. PSC-01-2425-AS-TC was issued, which accepted the company's \$100 settlement. The company did not pay the \$100 settlement, therefore, the certificate was cancelled administratively. On April 29, 2002, the Commission received the company's \$100 settlement, along with payment of the 2001 RAF, and a portion of the statutory penalty and interest charges, leaving a small

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balance. The company reported revenues for 2001 in the amount of \$59,504. On May 9, 2002, the Commission received a letter from the company, along with the bankruptcy notice. The letter asked that the certificate be reinstated since the company had filed for bankruptcy prior to the docket being established even though the Commission was not aware of it. The certificate was subsequently reinstated by Order No. PSC-02-1040-FOF-TC, issued on July 31, 2002.

- **03/11/03** - The Commission received a letter from the company's bankruptcy receiver, Thomas F. Lennon, advising that due to the bankruptcy, the company was no longer providing pay telephone service. A follow up letter was received on March 17, 2002, which requested cancellation of the company's certificate and requested that any unpaid RAFs be written-off.
- **04/08/03** - As of this date, there are no outstanding consumer complaints against Alpha Tel-Com, 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 Alpha Tel-Com, Inc.'s request for cancellation of its PAT Certificate No. 7418 due to bankruptcy?

RECOMMENDATION: Yes. The Commission should grant the company a bankruptcy cancellation of its PAT Certificate No. 7418 with an effective date of March 17, 2003. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2002 and 2003 RAFs, plus penalty and interest charges for the years 2001 and 2002, 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; J. Rojas)

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)(4) 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. 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 pre-petition 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.

On May 9, 2002, the Commission received notice that Alpha Tel-Com, Inc. had filed for Chapter 11 bankruptcy protection. On March 11, 2003, the Commission received a letter from Mr. Thomas F. Lennon, Receiver for Alpha Tel-Com, Inc., which advised that the company was no longer providing pay telephone services. In another letter received on March 17, 2003, Mr. Lennon requested cancellation of its PAT certificate and asked that any unpaid RAFs be written-off.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its PAT Certificate No. 7418 with an effective date of March 17, 2003. 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. (J. Rojas)

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.