

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of EZ Talk
Communications, L.L.C. for apparent violation
of Rule 25-22.032, F.A.C., Consumer
Complaints.

DOCKET NO. 040158-TX
ORDER NO. PSC-04-1253-PAA-TX
ISSUED: December 17, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER CANCELLING CERTIFICATE NO. 5530, VACATING ORDER NO. PSC-04-0393-
PAA-TX, AND REQUIRING EZ TALK COMMUNICATIONS, L.L.C. TO IMMEDIATELY
CEASE AND DESIST PROVIDING TELECOMMUNICATIONS

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.

Discussion of Issues

In October 2003, this Commission received two consumer complaints against EZ Talk Communications, L.L.C. (EZ Talk) and attempted to obtain responses from the company pursuant to Rule 25-2.032(5)(a), Florida Administrative Code, without success. Therefore, an Order No. PSC-04-0393-PAA-TX, was issued on April 13, 2004, penalizing the company in the amount of \$20,000, or in the alternative, cancelling its certificate, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No Petition for Formal Proceeding was initiated and the Order became final and effective.

On May 24, 2004, we received notice that EZ Talk had filed for Chapter 11 bankruptcy protection on January 8, 2004, and that the case had been converted to a Chapter 7 bankruptcy proceeding on March 4, 2004. Specifically, we received a pleading from the company, which requested pursuant to 11 U.S.C.S. §362(a)(1) and (3), that the commencement or continuation of all actions against EZ Talk be automatically stayed and is prohibited.

DOCUMENT NUMBER-DATE
13249 DEC 17 04
FPSC-COMMISSION CLERK

On September 9, 2004, an attorney in the US Bankruptcy Trustee's office spoke with our staff and verbally advised them that the company is no longer in business, has no need of its CLEC certificate and that the company does not have funds to pay penalties or fees. In addition, the company advised our staff that a written request to cancel its certificate due to the bankruptcy would be forthcoming. To date we have not received a written request to cancel the certificate.

Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requirements the payment of Regulatory Assessment Fees by January 30 of the subsequent year for telecommunications companies, and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts. According to our records, EZ Talk owes the 2003 and 2004 Regulatory Assessment Fees as well as late payment charges for the years 2000 and 2003.

In the case at hand, EZ Talk has filed for bankruptcy, and pursuant to 11 U.S.C.S. § 362(b)(4) of the 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. 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 us are not secured debts, and as a practical matter, are uncollectible in a bankruptcy proceeding where liquidation occurs. As such, we are, in this instance, prevented from collecting the fees owed by EZ Talk.

Accordingly, we hold that the Order No. PSC-04-0393-PAA-TX, issued on April 13, 2004 shall be vacated. EZ Talk Communications, L.L.C.'s request for cancellation of its CLEC Certificate No. 5530 with an effective date of November 30, 2004, due to bankruptcy is hereby granted. We shall notify the Division of the Commission Clerk & Administrative Services that any unpaid RAFs, including statutory late payment charges, not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts. Last we hold that EZ Talk shall immediately cease and desist providing competitive local exchange services in Florida.

We are vested with jurisdiction pursuant to Sections 364.285, 364.336, and 364.337, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-04-0393-PAA-TX, issued on April 13, 2004 is hereby vacated. We shall notify the Division of the Commission Clerk & Administrative Services that any unpaid RAFs, including statutory late payment charges, not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts.. It is further

ORDERED that EZ Talk Communications, L.L.C.'s request for cancellation of its CLEC Certificate No. 5530 with an effective date of November 30, 2004, due to bankruptcy is hereby granted, and the company shall immediately cease and desist providing competitive local exchange services in Florida. It is further

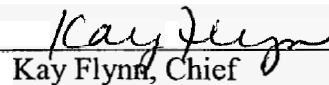
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 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

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 17th day of December, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By:



Kay Flynn, Chief
Bureau of Records

(SEAL)

JLS

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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 7, 2005.

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.