

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation
by Florida Public Service
Commission of PATS Certificate
No. 5012 issued to Crescent
Public Communications, Inc.,
effective 4/30/02.

DOCKET NO. 020394-TC
ORDER NO. PSC-02-0842-PAA-TC
ISSUED: June 19, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING CANCELLATION OF PAY TELEPHONE
CERTIFICATE DUE TO CHAPTER 11 BANKRUPTCY

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.

Crescent Public Communications, Inc. (Crescent) currently holds Certificate of Public Convenience and Necessity No. 5012, issued by the Commission on December 27, 1996, authorizing the provision of Pay Telephone service. The Division of the Commission Clerk and Administrative Services advised our staff that Crescent had not paid the 1999, 2000, and 2001 Regulatory Assessment Fees (RAFs). Also, accrued statutory penalties and interest charges for late RAFs payments for the years 1998, 1999, 2000 and 2001 had not been paid.

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Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161 (2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. All entities that apply for certification receive a copy of our rules governing Pay Telephone service.

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.

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. We note that the Division of the Commission Clerk and Administrative Services (CCA) will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that CCA shall request permission for the Commission to write-off the uncollectible amount.

Accordingly, we find it appropriate to cancel Pay Telephone Certificate No. 5012, effective April 30, 2002. If Crescent's certificate is canceled in accordance with this Order, Crescent shall immediately cease and desist providing Pay Telephone services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.335, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Crescent Public Communications, Inc.'s Certificate No. 5012 to provide Pay Telephone services is hereby canceled, effective April 30, 2002. It is further

ORDERED that the outstanding Regulatory Assessment Fees should not be sent to the Comptroller's Office for collection. The Division of the Commission Clerk and Administrative Services, instead, shall request for permission to write-off the uncollectible amount. It is further

ORDERED that if Crescent Public Communications, Inc.'s Certificate No. 5012 is canceled in accordance with this Order, that entity shall immediately cease and desist providing Pay Telephone 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

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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 19th Day of June, 2002.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

LHD

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.

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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 July 10, 2002.

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.