

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida  
Public Service Commission of Pay  
Telephone Certificate No. 7418  
issued to Alpha Tel-Com, Inc.  
for violation of Rule 25-4.0161,  
F.A.C., Regulatory Assessment  
Fees; Telecommunications  
Companies.

DOCKET NO. 010696-TC

In re: Application for  
certificate to provide pay  
telephone service by Alpha  
Telcom, Inc.

DOCKET NO. 020380-TC  
ORDER NO. PSC-02-1040-FOF-TC  
ISSUED: July 31, 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

ORDER VACATING IN PART ORDER NO. PSC-01-2425-AS-TC AND CLOSING  
DOCKET NO. 020380-TC

BY THE COMMISSION:

CASE BACKGROUND

On December 12, 2000, Alpha Tel-Com, Inc. (Alpha) was mailed  
the 2000 Regulatory Assessment Fee (RAF) Return Notice and payment  
was due by January 30, 2001. On February 21, 2001, the Division of  
the Commission Clerk & Administrative Services mailed a delinquent  
notice for the 2000 RAF.

On September 13, 2001, after the docket was opened, Alpha paid  
the past due amounts in full and proposed a settlement to resolve  
the docket. Order No. PSC-01-2425-AS-TC, which accepted the  
company's \$100 settlement proposal, was issued on December 12,  
2001. According to the Order, the company had until December 26,

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2001, to pay the \$100 contribution. When payment was apparently not received, the company's certificate was administratively cancelled effective December 28, 2001.

On April 29, 2002, we received correspondence dated April 24, 2002, along with payment of the \$100 settlement for the 2000 RAFs, as well as the 2001 RAFs, with associated statutory penalties and interest charges. In the letter dated April 24, 2002, the company explains that it had filed for bankruptcy on August 24, 2001, which was prior to the Commission issuance of Order No. PSC-01-2425-AS-TC. We also received a \$100 application fee and a new application for a pay telephone (PATS) certificate. Docket No. 020380-TC was opened on April 29, 2002, to process Alpha's application.

Although the company has applied for another certificate, the company now contends that its certificate should not have been cancelled for non-payment of the settlement approved by Order No. PSC-01-2425-AS-TC, because the company was in bankruptcy at the time the settlement was offered and when it was accepted by the Commission. However, at the time the settlement was approved, the company did not indicate that it was in bankruptcy, were we in receipt of a bankruptcy notice from the court. We received a copy of the bankruptcy notice on May 9, 2002, when it was faxed by Ms. Michele Pedraita and a copy of the notice was later sent to the Office of the General Counsel by the company's attorney. On May 10, 2002, staff requested that Docket No. 010696-TC be reopened upon receipt of documentation of the ongoing bankruptcy proceedings.

We have jurisdiction in this matter pursuant to Sections 364.336, 364.285, and 364.3375, Florida Statutes.

#### DISCUSSION OF ISSUES

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

This docket was established for nonpayment of the 2000 RAF, plus statutory penalty and interest charges. On December 12, 2001, Order No. PSC-01-2425-AS-TC was issued which accepted the company's \$100 settlement proposal. The company had until December 26, 2001 to pay the \$100 contribution. No payment was received; therefore, the company's certificate was administratively cancelled effective December 28, 2001. On April 24, 2002, we received notice that Alpha Tel-Com, Inc. had filed for Chapter 11 bankruptcy protection on August 24, 2001.

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 judgement, other than a money judgement, 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 to collect a debt or engage in other economic regulation. The Automatic Stay is applicable to the settlement offer since the offer is a resolution of the 2000 RAF, which is a pre-petition charge. On April 29, 2002, the Commission received payment of the \$100 settlement and the 2001 Regulatory Assessment Fee including penalty and interest. Alpha Tel-Com, Inc. is now current with all payment owed to this Commission.

In light of the preceding information, we find it appropriate to vacate in part Order No. PSC-01-2425-PAA-TC, in regard to the administrative cancellation of Alpha's pay telephone Certificate No. 7418, reinstating Alpha Tel-Com, Inc.'s certificate and close Docket No. 020380-TC since Alpha's application for a new pay telephone certificate has been rendered moot.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-01-2425-AS-TC shall be vacated in part rendering the

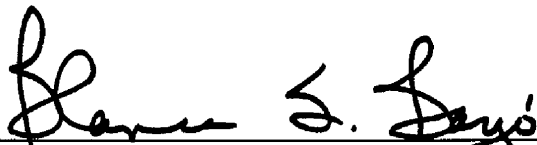
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administrative cancellation of Alpha Tel-Com, Inc.'s Pay Telephone Certificate No. 7418 void. It is further,

ORDERED that Alpha Tel-Com's Pay Telephone Certificate No. 7418 be reinstated. It is further

ORDERED that Docket No. 020380-TC shall be closed.

By ORDER of the Florida Public Service Commission this 31st day of July, 2002.



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

( S E A L )

JAE

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

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Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.