

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation  
by Florida Public Service  
Commission of PATS Certificate  
No. 783 issued to Elcotel, Inc.,  
effective 12/31/02.

DOCKET NO. 030073-TC  
ORDER NO. PSC-03-0402-PAA-TC  
ISSUED: March 24, 2003

The following Commissioners participated in the disposition of  
this matter:

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

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.

Elcotel, Inc. (Elcotel) currently holds Certificate of Public Convenience and Necessity No. 783, issued by the Commission on 03/28/1986, authorizing the provision of Pay Telephone service.

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.

DOCUMENT NUMBER-DATE

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FPSC-03-0402-PAA-TC CLERK

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.

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 prepetition 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 will be notified that the past due RAFs 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.

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Accordingly, we find it appropriate to cancel Pay Telephone Certificate No. 783, effective 12/31/02. If Elcotel's certificate is canceled in accordance with this Order, Elcotel 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 Elcotel, Inc.'s Certificate No. 783 to provide Pay Telephone services is hereby canceled, effective 12/31/02. It is further

ORDERED that the outstanding Regulatory Assessment Fees should not be sent to the Florida Department of Financial Services 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 Elcotel, Inc.'s Certificate No. 783 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 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.

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By ORDER of the Florida Public Service Commission this 24th  
Day of March, 2003.

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 )

VSM

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,

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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 April 14, 2003.

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.