

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida Public Service Commission of CLEC Certificate No. 7770 issued to Delta Phones, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, and compliance investigation for apparent violation of Rule 25-22.032(5)(a), F.A.C., Customer Complaints.	DOCKET NO. 030629-TX ORDER NO. PSC-04-0798-PAA-TX ISSUED: August 16, 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 GRANTING CANCELLATION OF COMPETITIVE LOCAL EXCHANGE
CERTIFICATE

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.

Rule 25-24.820, Florida Administrative Code, Revocation of a Certificate, provides that competitive local exchange telecommunications companies must request cancellation from the Commission in writing and either pay the current year's Regulatory Assessment Fee or provide the date it will be paid.

On December 12, 2002, our Division of the Commission Clerk & Administrative Services mailed the 2002 Regulatory Assessment Fee return notice to Delta Phones, Inc. The return form and payment were due by January 30, 2003. On February 21, 2003, our Office of the General Counsel sent a delinquent notice via certified mail for nonpayment of the 2002 fee. The returned receipt, delivered on March 3, 2003, showed the delinquent notice was signed for. Our Staff wrote the company on April 11, 2003, and explained that payment for the 2002 fee had not been received and advised it to pay the fee, including statutory late payment charges, by April

DOCUMENT NUMBER-DATE

08881 AUG 16 3

FPSC-COMMISSION CLERK

30, 2003, to avoid a docket from being established. On June 25, 2003, our staff faxed the company a note again requesting payment. After no response was received, Docket No. 030629-TX was established on July 16, 2003.

On July 25, 2003, Ms. Rhonda Walters of Delta Phones, Inc. called our staff and advised that the company wished to resolve the docket and asked that information be faxed to her. The 2002 Regulatory Assessment Fee return notice and options to resolve the docket were faxed on the same date. On July 29, 2003, the Commission received the company's payment of the 2002 Regulatory Assessment Fee, including statutory late payment charges. The company reported revenues in the amount of \$405,314 for the period ended December 31, 2002.

On December 1, 2003, we received the company's settlement proposal to pay a \$250 contribution to resolve the docket. After receiving the settlement proposal, our staff was notified by the Division of Consumer Affairs that Delta Phones, Inc. had two outstanding complaints. Our staff faxed the company the two complaints and requested a response before going forward with the settlement proposal. No response was received from the company.

At the March 16, 2004, Agenda Conference, we voted to accept the company's \$250 settlement proposal to resolve the Regulatory Assessment Fee rule violation and penalize the company \$20,000 for not responding to the two consumer complaints. Prior to the Order being issued, on March 23, 2004, we received notice that Delta Phones, Inc. had filed for Chapter 11 bankruptcy protection on January 8, 2004, and that the case had been converted to a Chapter 7 bankruptcy on March 4, 2004. Based on this information, our staff sought and received permission from this Commission not to issue the Proposed Agency Action Order.

The company has filed for bankruptcy, and pursuant to Section 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. Additionally, in any bankruptcy liquidation or reorganization, secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. Regulatory Assessment Fees, interest, and penalties owed by a company to the Florida Public Service Commission, as well as monetary settlements of cases resolving issues of failure to pay such fees, are not secured debts and, as a practical matter, are uncollectible in a bankruptcy proceeding where liquidation occurs. As such, we would be prevented from collecting the RAFs owed by this company, and from assessing and collecting a penalty for failure to pay the RAFs.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.285, 364.336, and 364.337, Florida Statutes. Accordingly, we hereby reconsider our vote at the March 16, 2004, Agenda Conference and instead grant the company cancellation of its certificate with an effective date of June 17, 2004, due to bankruptcy. Furthermore, the 2003 and 2004 Regulatory Assessment Fees and statutory late payment charges for 2003, shall not be sent to the Florida Department of Financial Services and our staff shall request permission to write-

ORDER NO. PSC-04-0798-PAA-TX
DOCKET NO. 030629-TX
PAGE 3

off the uncollectible amounts. In addition, we hereby require and require Delta Phones, Inc. to immediately cease and desist providing competitive local exchange services in Florida.

This Order will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute shall be deemed stipulated. If the company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts shall be deemed admitted and the right to a hearing waived. If the company's certificate is cancelled in accordance with this Order, Delta Phones, Inc. shall be required to immediately cease and desist providing competitive local exchange telecommunications services in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Delta Phones, Inc.'s certificate No. 7770 to provide Competitive Local Exchange services is hereby canceled, effective June 17, 2004. It is further

ORDERED that any Regulatory Assessment Fees shall not be sent to the Florida Department of Financial Services for collection. The Division of the Commission Clerk and Administrative Services, instead, shall request permission to write-off the uncollectible amounts. It is further

ORDERED that Delta Phones, Inc. shall immediately cease and desist providing competitive local exchange telecommunications services in Florida. It is further

ORDERED that the provisions of this Order, issued as a propose agency action, shall become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. It is further.

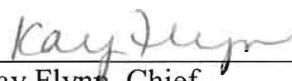
ORDERED that in the event that this order becomes final, this docket shall be closed.

ORDER NO. PSC-04-0798-PAA-TX
DOCKET NO. 030629-TX
PAGE 4

By ORDER of the Florida Public Service Commission this 16th day of August, 2004.

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

By:



Kay Flynn, Chief
Bureau of Records

(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, 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 September 6, 2004.

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.