

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
OCT 7 AM 11:51
RECORDS AND REPORTING

DATE: OCTOBER 7, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF TELECOMMUNICATIONS (ISLER) *PIE*
DIVISION OF LEGAL SERVICES (K. PEÑA; BEDELL) *WMP used for BK*

RE: DOCKET NO. 981375-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 5041 ISSUED TO PAY-TEL SERVICES INC. FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES, AND 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES.

AGENDA: 10/19/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981375.RCM

CASE BACKGROUND

- **01/07/97** - Pay-Tel Services Inc. obtained PATS Certificate No. 5041.
- **12/11/97** - The Division of Administration mailed the 1997 regulatory assessment fee (RAF) notice by certified mail. The USPS returned the receipt, which showed the RAF notice was signed for and delivered on December 13, 1997.
- **10/21/98** - As of this date, the company had not paid its 1997 RAF; therefore, staff opened this docket.

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- **11/04/98** - Mr. Luis Alfaro, Vice President of Pay-Tel Services, Inc. called staff and advised that he wanted to keep his certificate active and would make a settlement offer.
- **11/14/98** - The company paid the past due amount in full, including statutory penalty and interest charges.
- **11/18/98** - The company wrote and responded to staff's inquiries, proposed to pay future regulatory assessment fees by the due date of each year and offered a \$50 settlement to resolve this case.
- **11/20/98** - Staff called Mr. Alfaro and explained that we could not recommend approval of the settlement offer as proposed as it was not in line with other, similar settlements. Mr. Alfaro stated that he would file a revised settlement.
- **01/25/99** - The company paid its 1998 regulatory assessment fee. The company reported \$19,207 in revenues for the period ending December 31, 1998.
- **01/28/99** - Staff called Mr. Alfaro and left a message for a return call as the revised settlement had not been received.
- **02/01/99** - Staff called Mr. Alfaro and left another message for a return call. Mr. Alfaro called later the same day and stated he would get the letter out in the near future.
- **03/11/99** - Staff called Mr. Alfaro again and left another message. Mr. Alfaro returned the call and stated he would send the settlement offer. The settlement offer was received on this date by fax. Mr. Alfaro proposed to pay a settlement of \$2,500 in installments, stated he would pay future regulatory assessment fees by the due date of each year, and would respond to any Commission inquiry on a timely basis.
- **03/30/99** - The Commission approved the company's settlement offer. Staff called Mr. Alfaro and advised that his settlement had been approved and reminded him that the initial \$500 was due by April 30, 1999.
- **04/21/99** - Order No. PSC-99-0809-AS-TC was issued, which approved the company's \$2,500 settlement offer. The company is to pay \$500 by April 30, 1999 and \$100 in monthly installments by the last working day of each month until paid in full.

- **05/21/99** - Staff called Mr. Alfaro and reminded him the \$500 was past due.
- **05/24/99** - A \$600 payment was received, which represented the \$500 initial payment and the May 1999 installment.
- **07/20/99** - Staff called Mr. Alfaro and left a message for a return call concerning the June and July installments.
- **07/21/99** - Staff wrote Mr. Alfaro a certified letter explaining that June and July's installment payments must be received by July 30, 1999, to avoid staff taking another recommendation back to the Agenda Conference to recommend cancellation of his certificate for not complying with Commission Order No. PSC-99-0809-AS-TC.
- **07/26/99** - The USPS returned the receipt, which showed staff's July 21 letter was signed for and received on this date.
- **07/30/99** - The company's June and July installment payments totaling \$200 were received on this date.
- **09/30/99** - As of this date, the August and September installment payments have not been received.

Staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission cancel Pay-Tel Services's certificate for failure to comply with Commission Order PSC-99-0809-AS-TC?

RECOMMENDATION: Yes. The Commission should cancel the company's certificate for not complying with Order No. PSC-99-0809-AS-TC, which approved the company's offer to contribute a total of \$2,500 to the State General Revenue Fund. If the Commission's Order is not protested, the company's certificate should be canceled with an effective date of October 19, 1999. (Isler)

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may cancel a certificate if a company refuses to comply with a Commission Order. Rule 25-24.514, Florida Administrative Code, also provides for the Commission to cancel a certificate on its own motion for violation of Commission orders.

On April 21, 1999, Order No. PSC-99-0809-AS-TC was issued, which approved the company's offer to contribute \$2,500 to the State General Revenue Fund. The contribution was to be paid in monthly installments of \$100 due by the last working day of each month and an initial payment of \$500 due by April 30, 1999.

Pay-Tel has not made any of its payments, including the initial \$500, without prompting from staff. It is only after staff calls the company, that the company responds and makes its payment. As of this date, the company has failed to remit its August and September payments.

Staff believes that it has made every effort to assist Mr. Alfaro in complying with Order No. PSC-99-0809-AS-TC. Mr. Alfaro has, however, been repeatedly delinquent on his payments under the approved settlement. Staff believes that Mr. Alfaro has demonstrated a willful disregard for the requirements in the Order. Accordingly, staff recommends that the Commission cancel the company's certificate for not complying with the Order. If the Commission's Order is not protested, the company's certificate should be canceled with an effective date of October 19, 1999.

DOCKET NO. 981375-TC
DATE: OCTOBER 7, 1999

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed upon issuance of the Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance date of the proposed agency action order. (K. Peña; Bedell)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon issuance of the Consummating Order.

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