



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-PPSC
AUG 24 AM 11:57
RECORDS AND REPORTING

DATE: AUGUST 24, 2000

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *pi*
DIVISION OF LEGAL SERVICES (BANKS) *FRB* *AK*

RE: DOCKET NO. 000425-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 5526 ISSUED TO GLORIA CLOCKEDILE FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES

AGENDA: 09/05/00 - REGULAR AGENDA - FINAL ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\000425.RCM

CASE BACKGROUND

- **12/05/97** - This company was granted PATS Certificate No. 5526.
- **02/26/99** - The Commission received the company's payment for the 1998 regulatory assessment fee (RAF). The company reported an operating loss of \$216.93 for the period ended December 31, 1998.
- **12/08/99** - The Division of Administration mailed the regulatory assessment fee (RAF) notice. The due date was January 31, 2000.
- **02/29/00** - The Division of Administration mailed a delinquent letter.

DOCUMENT NUMBER-DATE

10437 AUG 24 8

PPSC-RECORDS/REPORTING

DOCKET NO. 000425-1C
DATE: AUGUST 24, 2000

- **03/13/00** - The Commission received correspondence from the company that advised it had been out of business since July 1999 and had filed for bankruptcy on August 15, 1999, and asked for cancellation of its certificate.
- **08/07/00** - Staff called the telephone number on file with the Master Commission Directory and was unsuccessful in speaking with Ms. Clockedile.
- **08/17/00** - As of this date, the 1999 RAF, plus statutory penalty and interest charges for the years 1997, 1998, and 1999 have not been paid.

Staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Gloria Clockedile's request for cancellation of PATS Certificate No. 5526?

RECOMMENDATION: This company filed for bankruptcy on August 15, 1999. Therefore, the Commission should grant the company a "bankruptcy cancellation" of its Certificate No. 5526, effective April 5, 2000. In addition, the Division of Administration will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write-off the uncollectible amount should be requested. (Isler; Banks)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, 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. Commission records show that this company has not paid its 1999 RAF, plus statutory penalty and interest charges for 1997, 1998, and 1999.

On April 5, 2000, the Commission received a notice from Gloria Clockedile advising that the company had filed for protection under Chapter 7 of the Federal Bankruptcy Code on August 15, 1999. Gloria Clockedile has requested cancellation of her certificate. It should be noted that the Commission was never formally served notice of bankruptcy proceedings for this company.

Chapter 7 of Section 109 of the Federal Bankruptcy Code provides for total liquidation of the business entity. The filing of a bankruptcy petition under Chapter 7 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Upon such filing, an interim Trustee in Bankruptcy is immediately appointed who has the duty to collect and secure the non-exempt assets of the debtor and distribute them to creditors in the manner set forth in the Bankruptcy Code. Secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. Regulatory fees and penalties owed by a company to the Florida Public Service Commission are not secured debts and, as a practical matter, are uncollectible in a Chapter 7 proceeding.

The Commission is prevented by the automatic stay provision of the Bankruptcy Code from taking action against this company for its

failure to pay regulatory assessment fees. Although the Commission does not typically grant a cancellation of a telecommunications certificate when there is an outstanding balance, a cancellation can be granted in this case, since the company requested cancellation of its certificate. However, it should be noted that the Division of Administration will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection.

Accordingly, the Commission should grant the company a "bankruptcy cancellation" of its Certificate No. 5526, effective April 5, 2000. In addition, the Division of Administration will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write-off the uncollectible amount should be requested.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission approves or modifies staff's recommendation on Issue 1, this docket should be closed upon cancellation of the certificate. If the Commission denies staff's recommendation on Issue 1, this docket should be closed administratively. (Banks)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or modified, the result will be a final order and this docket should be closed upon cancellation of the certificate. If the Commission denies staff's recommendation on Issue 1, this docket should be closed administratively.