

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation by Florida Public Service Commission of PATS Certificate No. 5878 issued to Phoenix Telecom, LLC d/b/a Phoenix Payphones, LLC, effective 4/2/04.	DOCKET NO. 040703-TC ORDER NO. PSC-04-0961-PAA-TC ISSUED: October 1, 2004
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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 CERTIFICATE DUE TO 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.

Section 364.336, Florida Statutes, requires the payment of Regulatory Assessment Fees by January 30 of the subsequent year for telecommunications companies, and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts. Rule 25-24.514, Florida Administrative Code, establishes the requirements for requesting cancellation of a company's pay telephone certificate.

This Docket was opened on July 7, 2004, when we received notice that Phoenix Telecom, LLC d/b/a Phoenix Payphones, LLC had filed for Chapter 11 bankruptcy protection. In addition, we also received a letter from the company, which advised that it had no customers and requested cancellation of its certificate and asked that any unpaid Regulatory Assessment Fees (RAFs) be written-off as no funds exist.

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

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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 pre-petition debt. However, in this case, the company has requested cancellation of its pay telephone certificate. Under those circumstances, this Commission is free to do so.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Phoenix Telecom, LLC d/b/a Phoenix Payphones, LLC's request for cancellation of its Florida Public Service Commission PATS Certificate No. 5878 is granted. It is further

ORDERED that, because no funds exist with this company from which to pay same, permission be sought from the Department of Financial Services to write off any unpaid Regulatory Assessment Fees owed this Commission. 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.

By ORDER of the Florida Public Service Commission this 1st day of October, 2004.

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

By:



Kay Flynn, Chief
Bureau of Records

(S E A L)

LF

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 October 22, 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.