

State of Florida



# Public Service Commission

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

**DATE:** October 6, 2005

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Competitive Markets & Enforcement (Isler) *pic*  
Office of the General Counsel (Scott) *KS B/L*

**RE:** Docket No. 050518-TC – Request for cancellation of PATS Certificate No. 5860 by U.S. Paytel Optima, L.L.C., effective July 29, 2005.

**AGENDA:** 10/18/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** ~~Staff~~ *AU* *hms*

**PREHEARING OFFICER:** ~~Administrative~~ *BD* *hms*

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\050518.RCM.DOC

### Discussion of Issues

**Issue 1:** Should the Commission deny U.S. Paytel Optima, L.L.C. a voluntary cancellation of its pay telephone company (PATS) Certificate No. 5860 and cancel the certificate on the Commission's own motion with an effective date of July 29, 2005?

**Recommendation:** Yes. (Isler; Scott)

**Staff Analysis:** See attached proposed Order.

DOCUMENT NUMBER-DATE

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**Issue 2:** Should this docket be closed?

**Recommendation:** Staff recommends that the Order issued from this recommendation 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 should be deemed stipulated. If the company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If the company fails to pay the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the company's certificate should be cancelled administratively and the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. If the company's 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. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the company's certificate. (Scott)

**Staff Analysis:** Staff recommends that the Commission take action as set forth in the foregoing staff recommendation statement.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for cancellation of PATS  
Certificate No. 5860 by U.S. Paytel Optima,  
L.L.C., effective July 29, 2005.

DOCKET NO. 050518-TC  
ORDER NO.  
ISSUED:

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION ORDER  
CANCELLING PAY TELEPHONE COMPANY CERTIFICATE INVOLUNTARILY

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.

U.S. Paytel Optima, L.L.C. currently holds Certificate No. 5860, issued by this Commission on June 13, 1998, authorizing the provision of pay telephone service. Pursuant to Section 364.336, Florida Statutes, pay telephone companies must pay a minimum annual Regulatory Assessment Fee 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. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due. In addition, Rule 25-24.514, Florida Administrative Code, provides that a payphone company requesting cancellation of its certificate must state its intent and date to pay the current Regulatory Assessment Fee. All entities that apply for certification receive a copy of our rules governing pay telephone service.

On July 29, 2005, our staff wrote U.S. Paytel Optima, L.L.C. a letter explaining that the 2004 Regulatory Assessment Fee had not been paid and to pay by August 19, 2005, to avoid an enforcement docket from being established. Later on the same date, the Commission received a copy of the Master Commission Directory update request form from the company with a handwritten note advising the company had closed its business December 31, 2003. The note was signed by Ed Otto, the Commission's official liaison. Our staff wrote Mr. Otto on August 3, 2005, and acknowledged his request for cancellation of U.S. Paytel Optima, L.L.C.'s certificate

since it was no longer in business. Furthermore, our staff explained that the company needed to pay the past due amounts and either pay the 2005 fee or provide a date certain the 2005 fee would be paid. Our staff requested a response by August 29, 2005. As of September 26, 2005, a response has not been received.

For the reasons described above, we deny U.S. Paytel Optima, L.L.C.'s request for voluntary cancellation of its certificate. However, we find it appropriate to involuntarily cancel the certificate effective July 29, 2005, on this Commission's own motion for failure to comply with Rule 25-24.514, Florida Administrative Code, and pay the Regulatory Assessment Fee, pursuant to Section 364.336, Florida Statutes.

Since it appears U.S. Paytel Optima, L.L.C. is no longer in business, there would be no purpose in requiring the company to pay a penalty. By cancelling the company's certificate on this Commission's own motion, however, we would be able to track the company should it apply for another certificate with us in the future. The cancellation of the certificate in no way diminishes the entity's obligation to pay applicable Regulatory Assessment Fees. If this Order is not protested, the company's PATS Certificate No. 5860 shall be cancelled effective July 29, 2005. The collection of the past due fees shall be referred to the Florida Department of Financial Services for further collection efforts. If U.S. Paytel Optima, L.L.C.'s certificate is cancelled in accordance with this Order, the company shall immediately cease and desist providing pay telephone service in Florida. We are vested with jurisdiction over this matter pursuant to Sections 350.113, 364.336, 364.3375, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED that pursuant to Rule 25-24.514, Florida Administrative Code, U.S. Paytel Optima, L.L.C.'s PATS certificate is hereby cancelled effective July 29, 2005, on this Commission's own motion for failure to pay the past due Regulatory Assessment Fee, including statutory late payment charges, pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the collection of the Regulatory Assessment Fees shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that the cancellation of the certificate in no way diminishes U.S. Paytel Optima, L.L.C.'s obligation to pay the applicable Regulatory Assessment Fees. It is further

ORDERED that if U.S. Paytel Optima, L.L.C.'s certificate is cancelled in accordance with this Order, U.S. Paytel Optima, L.L.C. shall immediately cease and desist providing pay telephone service 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 upon receipt of the Regulatory Assessment Fees, or upon cancellation of the certificate.

By ORDER of the Florida Public Service Commission this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

( S E A L )

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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 \_\_\_\_\_.

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.