

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-

DATE: November 17, 2005

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

FROM: Division of Competitive Markets & Enforcement (Isler) *PIJ*
Office of the General Counsel (McKay; Rojas; Scott) *VSM* *AK* *KS* *AG*

RE: Docket No. 050572-TC – Request for cancellation of PATS Certificate No. 8525 by Capital Property Solutions, Inc., effective December 31, 2005.

Docket No. 050631-TC – Request for cancellation of PATS Certificate No. 8123 by Spearman Distributors, Inc., effective December 31, 2005.

Docket No. 050674-TC – Request for cancellation of PATS Certificate No. 7971 by Transcommunications Incorporated, effective December 31, 2005.

Docket No. 050680-TC – Request for cancellation of PATS Certificate No. 8233 by DeBonis Enterprises, Inc., effective December 31, 2005.

Docket No. 050688-TC – Request for cancellation of PATS Certificate No. 8454 by Harland King d/b/a Trecom Payphones, effective December 31, 2005.

AGENDA: 11/29/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050572.RCM.DOC

DOCUMENT NUMBER-DATE

11046 NOV 17 05

FPSC-COMMISSION CLERK

Discussion of Issues

Issue 1: Should the Commission deny each company identified in Attachment A a voluntary cancellation of its respective pay telephone company (PATS) certificate and cancel the certificate on the Commission's own motion with an effective date of December 31, 2005?

Recommendation: Yes, the companies identified in Attachment A should have their respective PATS certificate cancelled on the Commission's own motion. (Isler, McKay, Rojas, Scott)

Staff Analysis: See attached proposed Order.

Issue 2: Should these dockets 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 any 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 any 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 any 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. These dockets 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. (McKay, Rojas, 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. 8525 by Capital Property Solutions, Inc., effective December 31, 2005.	DOCKET NO. 050572-TC
In re: Request for cancellation of PATS Certificate No. 8123 by Spearman Distributors, Inc., effective December 31, 2005.	DOCKET NO. 050631-TC
In re: Request for cancellation of PATS Certificate No. 7971 by Transcommunications Incorporated, effective December 31, 2005.	DOCKET NO. 050674-TC
In re: Request for cancellation of PATS Certificate No. 8233 by DeBonis Enterprises, Inc., effective December 31, 2005.	DOCKET NO. 050680-TC
In re: Request for cancellation of PATS Certificate No. 8454 by Harland King d/b/a Trecom Payphones, effective December 31, 2005.	DOCKET NO. 050688-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
ISILIO ARRIAGA

NOTICE OF PROPOSED AGENCY ACTION ORDER
CANCELLING PAY TELEPHONE COMPANY CERTIFICATES 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.

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.

This Commission received correspondence from each of the entities listed below requesting cancellation of their respective PATS certificate. Our staff wrote each of the entities and explained that before a voluntary cancellation could be recommended, the entities had to comply with Rule 25-24.514, Florida Administrative Code, by paying all past due Regulatory Assessment Fees, and either paying the 2005 fee or providing a date certain the fee would be paid. However, as of October 27, 2005, each of the companies listed in this Order have not fully complied with Rule 25-24.514, Florida Administrative Code. None of the companies identified in this Order have any outstanding consumer complaints.

<u>ENTITY'S NAME & CERT. NO.</u>	<u>EFFECTIVE DATE</u>	<u>UNPAID RAFS</u>	<u>UNPAID LATE PAYMENT CHARGES</u>
Capital Property Solutions, Inc. Certificate No. 8525	12/31/05	2004 2005	2004
Spearman Distributors, Inc. Certificate No. 8123	12/31/05	2005	n/a
Transcommunications Incorporated Certificate No. 7971	12/31/05	2004 2005	2002 2003 2004
DeBonis Enterprises Certificate No. 8233	12/31/05	2004 2005	2004
Harland King d/b/a Trecom Payphones Certificate No. 8454	12/31/05	2004 2005	2004

For the reasons described above, we deny each entity's request for voluntary cancellation of its respective certificate. However, we find it appropriate to involuntarily cancel each entity's respective certificate effective December 31, 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 the entities listed in this Order are no longer in business, there would be no purpose in requiring the companies to pay a penalty. By cancelling each entity's certificate on this Commission's own motion, however, we would be able to track the companies should they apply for another certificate with us in the future. The cancellation of the certificates in no way diminishes each entity's obligation to pay applicable Regulatory Assessment Fees. If this Order is not protested, each entity's respective pay telephone certificate shall be cancelled effective on December 31, 2005. The collection of the past due fees shall be referred to the Florida Department of Financial Services for further collection efforts. If any entity's certificate is cancelled in accordance with this Order, that 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, the requests for voluntary cancellation for pay telephone certificates listed herein are hereby denied. It is further

ORDERED that pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, each entity's PATS certificate is hereby cancelled on this Commission's own motion, effective on December 31, 2005, for failure to comply with Rule 25-24.514, Florida Administrative Code, Section 364.336, Florida Statutes; and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the cancellation of the certificate in no way diminishes any of the entities' obligation to pay the applicable Regulatory Assessment Fees, and accrued statutory late payment charges. It is further

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

ORDERED that if an entity's certificate is cancelled in accordance with this Order, that entity shall immediately cease and desist providing pay telephone service in Florida. It is further

ORDERED that any protest to the action proposed herein shall specify the entity or entities to which it applies. It is further

ORDERED that if a protest to this Order is filed, the protest shall not prevent the action proposed herein from becoming final with regard to the remaining entities listed in this Order. 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, these dockets 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)

VM; JR; KS

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.