

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: June 27, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Isler) *APC*
Office of the General Counsel (McKay) *vsim PKW*

RE: Docket No. 070258-TC – Request for cancellation of PATS Certificate No. 5146 by Pay Telephone of Florida, Inc., effective April 13, 2007.

AGENDA: 07/10/07 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\070258.RCM.DOC

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COMMISSION
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Discussion of Issues

Issue 1: Should the Commission deny Pay Telephone of Florida, Inc., a voluntary cancellation of its Pay Telephone Certificate No. 5146 and cancel the certificate on the Commission's own motion with an effective date of April 13, 2007?

Recommendation: Yes, the company should be denied a voluntary cancellation as listed on Attachment A. (Isler, McKay)

Staff Analysis: See attached proposed Order.

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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 pays the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's pay telephone company certificate will be voluntary. If the company fails to pay the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the company's pay telephone company certificate should be cancelled administratively, and the collection of the past due Regulatory Assessment Fees should be referred to the Florida Department of Financial Services for further collection efforts. If the company's pay telephone company 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 service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fees or upon cancellation of the company's pay telephone company certificate. (McKay)

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. 5146 by Pay Telephone of
Florida, Inc., effective April 13, 2007.

DOCKET NO. 070258-TC
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER
CANCELLING PAY TELEPHONE COMPANY CERTIFICATE
ON THE COMMISSION'S OWN MOTION

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.

Pay Telephone of Florida, Inc. currently holds Certificate No. 5146, issued by this Commission on May 16, 1997, authorizing the provision of pay telephone service (PATS). Pursuant to Section 364.336, Florida Statutes, pay telephone companies must pay a minimum annual Regulatory Assessment Fee 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 pay telephone company requesting cancellation of its certificate must state its intent and date to pay the current Regulatory Assessment Fee.

On March 8, 2007, a representative of the company, David Hess, called our staff and left a voice mail message asking that information on how to request cancellation be faxed to him. Mr. Hess stated that the company has been out of business for a couple of years. The 2006 Regulatory Assessment Fee (RAF) return form was faxed to Mr. Hess on March 8, 2007, and on March 12, 2007, our staff faxed Mr. Hess instructions on how to request cancellation, along with the 2007 RAF return form. On April 9, 2007, the company's president, Ms. Sharon Forrest,

called our staff. Ms. Forrest stated that the company is no longer in business and stated that she had written the Commission a letter in 2006 requesting cancellation. Our staff informed Ms. Forrest that a review of our records did not indicate receipt of the letter, however, if she could provide us a copy of the letter, the Commission would use that date as the effective date of the cancellation. Ms. Forrest was advised that the 2006 RAF must be included with the copy of the 2006 letter requesting cancellation. The 2006 RAF return form was faxed to Ms. Forrest. On April 12, 2007, the Commission received a letter dated April 9, 2007, from Ms. Forrest, which included the 2006 minimum RAF and stated another letter was attached and that the company had not been in business since 2005. The referenced letter was not attached. On April 26, 2007, our staff called Ms. Forrest and left a detailed voice mail message explaining that the letter was not attached to her April 9th letter and that it must be received in order to have a 2006 effective date for the cancellation. The call was never returned, therefore, on May 10, 2007, our staff faxed Ms. Forrest a note explaining that there was a small past due balance for late payment of the 2002 and 2006 RAFs and that a copy of the 2006 letter requesting cancellation was not attached to her April 9, 2007. Our staff advised that the company either needed to provide the Commission a copy of the 2006 letter and pay the small past due balance or pay the past due balance and the minimum RAF for 2007. A response was requested by May 24, 2007. As of June 27, 2007, the company has not provided the Commission with a copy of its letter dated in 2006 requesting cancellation of its pay telephone certificate or paid the 2007 fee.

For the reasons described above, we deny Pay Telephone of Florida, Inc.'s request for voluntary cancellation of its PATS certificate. However, we find it appropriate to involuntarily cancel the pay telephone certificate, effective April 13, 2007, on this Commission's own motion for failure to comply with Rule 25-24.514, Florida Administrative Code, and pursuant to Section 364.336, Florida Statutes.

Since it appears Pay Telephone of Florida, Inc. does not provide service in Florida and has requested cancellation of its certificate, there would be no purpose in requiring the company to pay a penalty. The cancellation of the PATS certificate, in no way diminishes the entity's obligation to pay the applicable Regulatory Assessment Fee. If this Order is not protested, the company's PATS Certificate No. 5146 shall be cancelled, effective April 13, 2007. If the company pays the Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's pay telephone certificate will be voluntary. If the company fails to protest the Order or pay the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the company's pay telephone certificate should be cancelled administratively, and the collection of the past due Regulatory Assessment Fees should be referred to the Florida Department of Financial Services for further collection efforts. If the company's pay telephone 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 service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fee or upon cancellation of the company's pay telephone certificate. If Pay Telephone of Florida, Inc.'s PATS certificate is cancelled on this Commission's own motion and it subsequently decides to reapply for a certificate as a pay telephone company, Pay Telephone of Florida, Inc. shall be required to first pay any outstanding fees, including accrued statutory late payment charges. We

are vested with jurisdiction over these matters 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, Pay Telephone of Florida, Inc.'s PATS Certificate No. 5146 is hereby cancelled effective April 13, 2007, on this Commission's own motion for failure to pay the 2007 Regulatory Assessment Fee, pursuant to 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 Pay Telephone of Florida, Inc.'s obligation to pay the applicable Regulatory Assessment Fee. If the company's PATS certificate is cancelled and the company subsequently decides to reapply for a certificate as a pay telephone company, that company shall be required to first pay any outstanding fee, including accrued statutory late payment charges. It is further

ORDERED that if Pay Telephone of Florida, Inc. pays the Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, the cancellation of the certificate shall be deemed voluntary. It is further

ORDERED that if Pay Telephone of Florida, Inc. does not pay the Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, the collection of the Regulatory Assessment Fee shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if Pay Telephone of Florida, Inc.'s certificate is cancelled in accordance with this Order, Pay Telephone of Florida, Inc. 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 Office of Commission Clerk, 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 Fee, or upon cancellation of the PATS certificate.

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

ANN COLE
Commission Clerk

(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 Office of Commission Clerk, 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.