

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: July 22, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (Pruitt)
Office of the General Counsel (McKay)

RE: Docket No. 100145-TC – Request for cancellation of PATS Certificate No. 8510 by Erik Lerman d/b/a Smart Tel, effective March 25, 2010.

AGENDA: 08/03/10 – 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\RAD\WP\100145.RCM.DOC

RECEIVED-FPSC
10 JUL 22 AM 8:22
COMMISSION
CLERK

Discussion of Issues

Issue 1: Should the Commission deny Erik Lerman d/b/a Smart Tel (Smart Tel) a voluntary cancellation of its Pay Telephone Service (PATS) Certificate No. 8510, and cancel the certificate on the Commission's own motion with an effective date of March 25, 2010?

Recommendation: Yes, unless the company pays the 2010 Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, Smart Tel should be denied a voluntary cancellation as provided in Attachment A. (Pruitt, McKay)

Staff Analysis: See the 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 2010 Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, then the cancellation of its certificate will be voluntary. If the company fails to pay the 2010 Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, then its certificate should be cancelled administratively. The collection of the unpaid Regulatory Assessment Fee should be referred to the Florida Department of Financial Services for further collection efforts.

This docket should be closed administratively either as a voluntary cancellation upon receipt of the payment of the 2010 Regulatory Assessment Fee or cancelled involuntarily on the Commission's own motion. Upon cancellation of the company's PATS certificate, the company should be required to immediately cease and desist providing telecommunications service in Florida. (Pruitt, 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. 8510 by Erik Lerman d/b/a
Smart Tel, effective March 25, 2010.

|| DOCKET NO. 100145-TC

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER
CANCELLING PAY TELEPHONE SERVICE 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.

Erik Lerman d/b/a Smart Tel (Smart Tel) currently holds Pay Telephone Service (PATS) Certificate No. 8510. Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) for each certificate if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-24.514, Florida Administrative Code, a pay telephone service company must state its intent and date to pay any current and past due Regulatory Assessment Fees with its request for cancellation.

This Commission received correspondence from Smart Tel requesting cancellation of its certificate and stating that the company did not want to pay any additional RAFs. Our staff contacted the company and advised that since the pay telephone provider did not intend to pay the 2010 RAF, staff would process the request as an involuntary cancellation.

For the reasons described above, we deny Smart Tel's request for voluntary cancellation of its certificate. However, we find it appropriate to involuntarily cancel the company's certificate effective March 25, 2010, 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.

The cancellation of a PATS certificate in no way diminishes that company's obligation to pay the applicable Regulatory Assessment Fee. If this Order is not protested, the company's

PATS certificate shall be cancelled. If the company pays the 2010 Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, then the cancellation of the PATS certificate will be voluntary. If the company fails to protest the Order or pay the 2010 Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, then the company's PATS certificate shall be involuntarily cancelled administratively and the collection of the unpaid 2010 Regulatory Assessment Fee shall be referred to the Florida Department of Financial Services for further collection efforts. If the company's PATS certificate is cancelled in accordance with this Order, the company shall be required to immediately cease and desist providing telecommunications service in Florida. This docket shall be closed administratively either upon receipt of the payment of the 2010 Regulatory Assessment Fee for a voluntary cancellation, or upon this Commission's own motion as an involuntary cancellation. If the company's PATS certificate is involuntarily cancelled, and the company subsequently decides to reapply as a telecommunications company, the company shall be required to first pay the 2010 Regulatory Assessment Fee. We are vested with jurisdiction over these matters pursuant to Sections 350.113, 364.285, 364.336, and 364.3375, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that pursuant to Rule 25-24.514, Florida Administrative Code, Smart Tel's Certificate No. 8510 is hereby cancelled effective March 25, 2010, on this Commission's own motion for failure to pay the 2010 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 company's PATS certificate in no way diminishes the company's obligation to pay the 2010 Regulatory Assessment Fee. If the company's PATS certificate is cancelled, and the company subsequently decides to reapply as a telecommunications company, the company shall be required to first pay the 2010 Regulatory Assessment Fee. It is further

ORDERED that if Smart Tel pays the 2010 Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, the cancellation of its certificate shall be deemed voluntary. It is further

ORDERED that if Smart Tel does not pay the 2010 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 Smart Tel's PATS certificate is cancelled in accordance with this Order, the company shall immediately cease and desist providing telecommunications 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-

Docket No. 100145-TC
Date: July 22, 2010

Attachment A

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 administratively as a voluntary cancellation upon receipt of the payment of the 2010 Regulatory Assessment Fee, or as an involuntary cancellation on this Commission's own motion.

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

ANN COLE
Commission Clerk

(SEAL)
VSM

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.