

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: August 26, 2004

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

FROM: Division of Competitive Markets & Enforcement (Isler)
Office of the General Counsel (Fordham)

RE: Docket No. 040703-TC – 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.

AGENDA: 09/07/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040703.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission grant Phoenix Telecom, LLC d/b/a Phoenix Payphones, LLC cancellation of its Pay Telephone Service certificate with an effective date of April 2, 2004, due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that any unpaid RAFs, including statutory penalty and interest charges, should not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts; and require the company to immediately cease and desist providing pay telephone services in Florida?

Recommendation: Yes. (Isler; Fordham)

Staff Analysis: 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.

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 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.

The Commission received notice that the company had filed for Chapter 11 bankruptcy protection. In addition, the Commission 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.

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Issue 2: Should this docket be closed?

Recommendation: Yes, if no protest is filed and upon issuance of a Consummating Order.
(Fordham)

Staff Analysis: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. The docket should then be closed upon issuance of a Consummating Order.