

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: Office of the General Counsel (L. Fordham)
Division of Competitive Markets & Enforcement (R. Kennedy)

RE: Docket No. 971485-TI – Initiation of show cause proceedings against Preferred Carrier Services, Inc. d/b/a Telefonos Para Todos and d/b/a Phones For ALL for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

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

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\971485.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission notify the Division of the Commission Clerk & Administrative Services to request permission from the Florida Department of Financial Services to write-off the uncollectible amount of \$10,000 due to the bankruptcy of Preferred Carrier Services, Inc.?

Recommendation: Yes. (L. Fordham, R. Kennedy)

Staff Analysis: On December 7, 1998, the Commission issued Order No. PSC-98-1627-AS-TI approving Preferred Carrier Services, Inc.'s offer of settlement to resolve the company's apparent violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection (slamming). Preferred Carrier Services, Inc.'s settlement offer included a voluntary contribution of \$50,000 to the General Revenue Fund. The company proposed to pay the \$50,000 in five equal payments of \$10,000. The company paid the first four installments for a total of \$40,000. The last installment of \$10,000 was due on December 1, 1999. The last installment was not paid because Preferred Carrier Services, Inc. filed for Chapter 11 bankruptcy protection in the US Bankruptcy Court - Northern District of Texas on September 18, 1999, Case No. 99-38082.

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.

Preferred Carrier Services, Inc. listed the State of Florida (Florida Public Service Commission) as a claimant for the \$10,000 balance owed in Docket 971485-TI when it filed for bankruptcy with the US Bankruptcy Court - Northern District of Texas. As documented in a Claims Register Report issued by the US Bankruptcy Court - Northern District of Texas, no monies from the proceedings were allowed for payment against the State of Florida's claim. Based on the actions of the US Bankruptcy Court – Northern District of Texas, the debt owed by Preferred Carrier Services, Inc. to the State of Florida was dismissed.

Preferred Carrier Services, Inc. emerged from bankruptcy during October 2002. Preferred Carrier Services, Inc. has consistently paid its regulatory assessment fees each year that it has been authorized by the Commission to provide intrastate interexchange telecommunications services in Florida.

Based on this information, staff recommends that the Commission notify the Division of the Commission Clerk & Administrative Services to request permission from the Florida Department of Financial Services to write-off the uncollectible amount of \$10,000 due to the bankruptcy of Preferred Carrier Services, Inc. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02, 364.285, and 364.603, Florida Statutes.

Issue 2: Should this docket be closed?

Recommendation: Yes. (L. Fordham)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed as there are no other issues that need to be addressed by the Commission.