

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 18, 2004

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

FROM: Division of Competitive Markets & Enforcement (Buys)
Office of the General Counsel (Susac)
Office of Standards Control & Reporting (Lowery)

RE: Docket No. 040158-TX – Compliance investigation of EZ Talk Communications, L.L.C. for apparent violation of Rule 25-22.032, F.A.C., Consumer Complaints.

AGENDA: 11/30/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040158.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission vacate Order No. PSC-04-0393-PAA-TX, issued on April 13, 2004; grant EZ Talk Communications, L.L.C. cancellation of its Competitive Local Exchange Company (CLEC) Certificate No. 5530 with an effective date of November 30, 2004, due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that any unpaid RAFs, including statutory late payment charges, 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 competitive local exchange services in Florida?

Recommendation: Yes. (Buys; Susac; Lowery)

Staff Analysis: In October 2003, this Commission received two consumer complaints against EZ Talk Communications, L.L.C. and attempted to obtain responses from the company pursuant to Rule 25-2.032(5)(a), Florida Administrative Code, without success. Therefore, Order No.

PSC-04-0393-PAA-TX, issued on April 13, 2004, penalized the company in the amount of \$20,000, or in the alternative, cancelled its certificate, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No Petition for Formal Proceeding was initiated and the Order became final and effective.

On May 24, 2004, the Commission received notice that EZ Talk Communications, L.L.C. had filed for Chapter 11 bankruptcy protection on January 8, 2004, and that the case had been converted to a Chapter 7 bankruptcy proceeding on March 4, 2004. Specifically, the Commission received a pleading from the company, which requested pursuant to 11 U.S.C.S. §362(a)(1) and (3), that the commencement or continuation of all actions against EZ Talk Communications, L.L.C. be automatically stayed and is prohibited.

On September 9, 2004, staff talked with an attorney in the US Bankruptcy Trustee's office. Staff was verbally advised that the company is no longer in business nor has need of its CLEC certificate and that the company had no funds to pay any penalties or fees. Staff was advised that a written request to cancel the company's certificate due to the bankruptcy would be forthcoming. Despite subsequent attempts on the part of staff to obtain the written request to cancel the certificate, staff has been unsuccessful.

Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requirements 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. According to Commission records EZ Talk Communications, L.L.C. owes the 2003 and 2004 Regulatory Assessment Fees and late payment charges for the years 2000 and 2003.

In this case, the company has filed for bankruptcy, and pursuant to 11 U.S.C.S. § 362(b)(4) of the Bankruptcy Code, the filing of a petition for bankruptcy relief acts as an automatic stay that enjoins a governmental entity from exercising its regulatory authority to collect a pre-petition debt. Additionally, in any bankruptcy liquidation or reorganization, secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. Regulatory Assessment Fees, late payment charges, and penalties owed by a company to the Florida Public Service Commission are not secured debts and, as a practical matter, are uncollectible in a bankruptcy proceeding where liquidation occurs. As such, the Commission would be prevented from collecting the fees owed by this company, and from assessing and collecting a penalty.

The Commission is vested with jurisdiction pursuant to Sections 364.285, 364.336, and 364.337, Florida Statutes. Accordingly, staff recommends that the Commission vacate Order No. PSC-04-0393-PAA-TX, issued on April 13, 2004; grant EZ Talk Communications, L.L.C. cancellation of its CLEC Certificate No. 5530 with an effective date of November 30, 2004, due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that any unpaid RAFs, including statutory late payment charges, 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 competitive local exchange services in Florida.

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'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 competitive local exchange services in Florida. The docket should be closed administratively upon cancellation of the company's certificate. **(Susac)**

Staff Analysis: Staff recommends that the Commission take action as set forth in the foregoing staff recommendation statement.