

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: October 6, 2005

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

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

RE: Docket No. 050565-TC – Request for cancellation of PATS Certificate No. 5943 by Birchwood Properties Corp., effective August 23, 2005.

AGENDA: 10/18/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: Staff

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050565.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny Birchwood Properties Corp. a voluntary cancellation of its pay telephone company (PATS) Certificate No. 5943 and cancel the certificate on the Commission's own motion with an effective date of August 23, 2005?

Recommendation: Yes. (Isler; Scott)

Staff Analysis: See attached proposed Order.

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 fails to pay the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the company's certificate should be cancelled administratively and the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. 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 pay telephone services in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the company's certificate. (Scott)

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. 5943 by Birchwood Properties
Corp., effective August 23, 2005.

DOCKET NO. 050565-TC
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION ORDER
CANCELLING PAY TELEPHONE COMPANY CERTIFICATE INVOLUNTARILY

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.

Birchwood Properties Corp. currently holds Certificate No. 5943, issued by this Commission on November 3, 1998, authorizing the provision of pay telephone service. Pursuant to Section 364.336, Florida Statutes, pay telephone companies must pay a minimum annual Regulatory Assessment Fee of \$50 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 payphone company requesting cancellation of its certificate must state its intent and date to pay the current Regulatory Assessment Fee. All entities that apply for certification receive a copy of our rules governing pay telephone service.

On July 29, 2005, our staff wrote Birchwood Properties Corp. a letter explaining that the 2004 Regulatory Assessment Fee had not been paid and to pay by August 19, 2005, to avoid an enforcement docket from being established. On August 18, 2005, this Commission received the company's 2004 Regulatory Assessment Fee, including statutory late payment charges, along with correspondence from the company's President, Mr. Charles M. Prather, requesting cancellation of its certificate. On August 26, 2005, our staff wrote Mr. Prather and explained that before a voluntary cancellation of the certificate could be recommended, the 2005

Regulatory Assessment Fee needed to be paid. As of September 26, 2005, the company has not paid the 2005 Regulatory Assessment Fee or provided a date certain that the fee will be paid.

For the reasons described above, we deny Birchwood Properties Corp.'s request for voluntary cancellation of its certificate. However, we find it appropriate to involuntarily cancel the certificate effective August 23, 2005, on this Commission's own motion for failure to comply with Rule 25-24.514, Florida Administrative Code, and pay the Regulatory Assessment Fee, pursuant to Section 364.336, Florida Statutes.

Since it appears Birchwood Properties Corp. is no longer in business, there would be no purpose in requiring the company to pay a penalty. By cancelling the company's certificate on this Commission's own motion, however, we would be able to track the company should it apply for another certificate with us in the future. The cancellation of the 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. 5943 shall be cancelled effective August 23, 2005. The collection of the past due fees shall be referred to the Florida Department of Financial Services for further collection efforts. If Birchwood Properties Corp.'s certificate is cancelled in accordance with this Order, the company shall immediately cease and desist providing pay telephone service in Florida. We are vested with jurisdiction over this matter 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, Birchwood Properties Corp.'s PATS certificate is hereby cancelled effective August 23, 2005, on this Commission's own motion for failure to pay the 2005 Regulatory Assessment Fee, pursuant to Section 364.336, Florida Statutes, Rule 25-24.514, Florida Administrative Code, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that 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 the cancellation of the certificate in no way diminishes Birchwood Properties Corp.'s obligation to pay the applicable Regulatory Assessment Fee. It is further

ORDERED that if Birchwood Properties Corp.'s certificate is cancelled in accordance with this Order, Birchwood Properties Corp. 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 Director, Division of the Commission Clerk and Administrative Services, 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 certificate.

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

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(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 Director, Division of the Commission Clerk and Administrative Services, 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.