

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: June 7, 2007

TO: Office of Commission Clerk (Cole)

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

RE: Docket No. 070118-TP – Request for cancellation of PATS Certificate No. 8081 and CLEC Certificate No. 8384 by Phone 1 Smart LLC, effective February 16, 2007.

AGENDA: 06/19/07 – Regular Agenda –Interested Persons May Participate

COMMISSIONERS ASSIGNED: Edgar, Carter, McMurrian

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\070118.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission vacate its vote from the March 13, 2007, Agenda Conference and close this docket?

Recommendation: Yes, the Commission's March 13, 2007, Agenda Conference vote should be vacated and this docket should be closed. (Isler; McKay)

Staff Analysis: This docket was established on February 16, 2007, after receiving a letter from the company's consultant, Ms. Monique Byrnes with Technologies Management, Inc. The letter requested cancellation of Phone 1 Smart LLC's Pay Telephone Certificate No. 8081 and its Competitive Local Exchange Company (CLEC) Certificate No. 8384.

Docket No. 070118-TP

Date: June 7, 2007

As requested, the Commission cancelled the company's pay telephone certificate administratively. Staff filed a recommendation to voluntarily cancel the CLEC certificate and the Commission voted to approve the cancellation on March 13, 2007.

While this Docket was being processed, Phone 1 Smart LLC was party to a separate proceeding, Docket No. 060622-TX. Docket No. 060622-TX was established to address Phone 1 Smart LLC's failure to respond to a request for data required to produce a report on the status of local competition in the telecommunications industry. Phone 1 Smart LLC did not respond to the proposed agency action order issued in Docket No. 060622-TX. Consequently, the docket was administratively closed on March 22, 2007, and the company's CLEC certificate was cancelled.

Because the company's CLEC certificate was cancelled for cause in Docket No. 060622-TX, the Commission should vacate its vote from the March 13, 2007, Agenda Conference, and not voluntarily cancel the company's CLEC certificate. This docket should be closed as there are no further issues that need addressing by the Commission.

The Commission is vested with jurisdiction over these matters pursuant to Sections 350.113, 364.336, 364.02, and 364.285, Florida Statutes.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for cancellation of PATS
Certificate No. 8081 and CLEC Certificate No.
8384 by Phone 1 Smart LLC, effective
February 16, 2007.

DOCKET NO. 070118-TP
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. MCMURRIAN

ORDER VACATING MARCH 13, 2007, AGENDA CONFERENCE VOTE
AND CLOSING DOCKET

BY THE COMMISSION:

On February 16, 2007, this Commission received a letter from Phone 1 Smart LLC's consultant, Ms. Monique Byrnes with Technologies Management, Inc., which requested cancellation of the company's Pay Telephone Certificate No. 8081 and its Competitive Local Exchange Company (CLEC) Certificate No. 8384. The 2006 and 2007 Regulatory Assessment Fees for both certificates were included with the letter. The company's pay telephone certificate was voluntarily cancelled administratively. In addition, our staff filed its recommendation to voluntarily cancel the CLEC certificate. The Commission voted to approve the voluntary cancellation on March 13, 2007.

At the time of the March 13, 2007, vote, a separate docket, No. 060622-TX, was pending to address any certificated incumbent and competitive local exchange carriers failing to respond to a data request, which is essential to this Commission submitting its report to the Legislature on the status of local competition in the telecommunications industry. Phone 1 Smart LLC was among those companies failing to respond to the data request. The company was initially penalized \$10,000 for failing to provide a response to a data request, thereby denying staff access to the company's records. Phone 1 Smart LLC did not respond to the proposed agency action order, therefore, its CLEC certificate was cancelled in Docket No. 060622-TX. On March 22, 2007, after the Commission's vote in Docket No. 070118-TP, Docket No. 060622-TX was closed and the company's certificate cancelled.

Accordingly, we find it appropriate to vacate our vote at the March 13, 2007, Agenda Conference, which granted Phone 1 Smart LLC a voluntary cancellation of its CLEC certificate. Since there are no further issues that need addressing by this Commission in Docket No. 070118-TP, this docket shall be closed. The Commission is vested with jurisdiction over these matters pursuant to Sections 350.113, 364.336, 364.02, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we hereby vacate our vote at the March 13, 2007, Agenda Conference as it pertains to the voluntary cancellation of Phone 1 Smart LLC's CLEC certificate. It is further

ORDERED that Docket No. 070118-TP is closed.

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

ANN COLE
Commission Clerk

(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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.