

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 21, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Isler)
Office of the General Counsel (McKay)

RE: Docket No. 080156-TC – Request for cancellation of PATS Certificate No. 7504 by Business Telecom, Inc. d/b/a BTI, effective March 13, 2008.

AGENDA: 09/04/08 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCP\WP\080156.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny Business Telecom, Inc. d/b/a BTI, a voluntary cancellation of its pay telephone service (PATS) Certificate No. 7504 and cancel the certificate on the Commission's own motion with an effective date of March 13, 2008?

Recommendation: Yes, the company should be denied a voluntary cancellation as listed on Attachment A. (Isler, McKay)

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 pays the Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's PATS certificate will be voluntary. If the company fails to pay the Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, then the company's PATS certificate should be cancelled administratively, and the collection of the past due Regulatory Assessment Fee should be referred to the Florida Department of Financial Services for further collection efforts. If the company's PATS certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing telecommunications service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fee or upon cancellation of the company's PATS certificate. (McKay)

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. 7504 by Business Telecom, Inc.
d/b/a BTI, effective March 13, 2008.

DOCKET NO. 080394-TC
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER
CANCELLING PAY TELEPHONE COMPANY CERTIFICATE
ON THE COMMISSION'S OWN MOTION

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.

Business Telecom, Inc. d/b/a BTI currently holds Certificate No. 7504, issued by this Commission on July 18, 2000, authorizing the provision of pay telephone service (PATS). Pursuant to Section 364.336, Florida Statutes, pay telephone companies must pay a minimum annual Regulatory Assessment Fee 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 pay telephone company requesting cancellation of its certificate must state its intent and date to pay the current Regulatory Assessment Fee (RAF).

On March 13, 2008, this Commission received a letter from Ms. Heather Gibbs, Regulatory Manager, requesting cancellation of the company's certificate. Our staff e-mailed Ms. Gibbs the 2008 Regulatory Assessment Fee return form and explained that the fee needed to be paid before staff could recommend a voluntary cancellation. Ms. Gibbs responded via e-mail

that the RAF return form had been forwarded to the company's Finance Department for processing and payment on April 2, 2008. The 2008 Regulatory Assessment Fee remains unpaid.

For the reasons described above, we deny Business Telecom, Inc. d/b/a BTI's request for voluntary cancellation of its PATS certificate. However, we find it appropriate to involuntarily cancel the pay telephone certificate, effective March 13, 2008, on this Commission's own motion for failure to comply with Rule 25-24.514, Florida Administrative Code, and pursuant to Section 364.336, Florida Statutes.

Since it appears Business Telecom, Inc. d/b/a BTI does not currently provide service in Florida and has requested cancellation of its certificate, there would be no purpose in requiring the company to pay a penalty. The cancellation of the PATS certificate, in no way diminishes the entity's obligation to pay the applicable RAF, including any statutory late payment charges. If this Order is not protested, the company's PATS Certificate No. 7504 shall be cancelled, effective March 13, 2008. If the company pays the RAF prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's PATS certificate shall be voluntary. If the company fails to protest the Order or pay the RAF prior to the expiration of the Proposed Agency Action Order, then the company's PATS certificate shall be cancelled administratively, and the collection of the unpaid fee shall be referred to the Florida Department of Financial Services for further collection efforts. If the company's PATS certificate is cancelled in accordance with this Order, the company shall be required to immediately cease and desist providing pay telephone service in Florida. This docket shall be closed administratively either upon receipt of the payment of the RAF or upon cancellation of the company's PATS certificate. If Business Telecom, Inc. d/b/a BTI's PATS certificate is cancelled on this Commission's own motion and it subsequently decides to reapply for a certificate as a telecommunications company, Business Telecom, Inc. d/b/a BTI shall be required to first pay any outstanding fees, including accrued statutory late payment charges. We are vested with jurisdiction over these matters 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, Business Telecom, Inc. d/b/a BTI's PATS Certificate No. 7504 is hereby cancelled effective March 13, 2008, on this Commission's own motion for failure to pay the 2008 Regulatory Assessment Fee, pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the cancellation of the certificate in no way diminishes Business Telecom, Inc. d/b/a BTI's obligation to pay the applicable Regulatory Assessment Fee, including any applicable late payment charges. If the company's PATS certificate is cancelled and the company subsequently decides to reapply for a certificate as a telecommunications company, that company shall be required to first pay any outstanding fee, including accrued statutory late payment charges. It is further

ORDERED that if Business Telecom, Inc. d/b/a BTI pays the Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, the cancellation of the certificate shall be deemed voluntary. It is further

ORDERED that if Business Telecom, Inc. d/b/a BTI does not pay the Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, 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 if Business Telecom, Inc. d/b/a BTI's certificate is cancelled in accordance with this Order, Business Telecom, Inc. d/b/a BTI 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 Office of Commission Clerk, 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 administratively either upon receipt of payment of the Regulatory Assessment Fee, including any late payment charges, or upon cancellation of the company's pay telephone certificate.

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 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 Office of Commission Clerk, 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.