

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: April 23, 2009

TO: Office of Commission Clerk (Cole)

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

RE: Docket No. 090143-TC – Request for cancellation of PATS Certificate No. 5418 by John Palumbo d/b/a Duck's Back Enterprises, effective March 16, 2009.

AGENDA: 05/05/09 – 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\090143.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny John Palumbo d/b/a Duck's Back Enterprises, a voluntary cancellation of pay telephone service (PATS) Certificate No. 5418 and cancel the certificate on the Commission's own motion with an effective date of March 16, 2009?

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

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 Fees, including accrued late payment charges, 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 Fees, including accrued late payment charges, 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 Fees, including accrued late payment charges, 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 Fees, including accrued late payment charges, or upon cancellation of the company's PATS certificate. (Brooks)

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. 5418 by John Palumbo d/b/a
Duck's Back Enterprises, effective March 16,
2009.

DOCKET NO. 090143-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.

John Palumbo d/b/a Duck's Back Enterprises currently holds Certificate No. 5418, issued by this Commission on August 13, 1997, 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 February 19, 2009, our staff e-mailed the company and explained that the 2008 RAF had not been paid and that delinquent notices were being sent via certified mail on February 20, 2009. A copy of the 2008 RAF return form was attached to the e-mail. On February 23, 2009,

Mr. Palumbo called our staff and left a voice mail message advising he had sent in a letter in 2007 requesting cancellation because the company had not had any payphones since 2006. Our staff returned the call on February 23, 2009, and left a voice mail message asking for a return call. On March 3, 2009, our staff mailed the company a note explaining that the company's 2006 RAF return was completed on February 22, 2007, and there was not a note on the form nor correspondence attached requesting cancellation or indicating that the company was no longer in business. In addition, the 2007 RAF return was completed on January 24, 2008, and again, no letter requesting cancellation was attached. Our staff explained that in order to be granted a voluntary cancellation, the 2008 and 2009 RAFs needed to be paid. On March 16, 2009, this Commission received a letter from Mr. Palumbo dated April 7, 2007, requesting cancellation. The letter was postmarked March 14, 2009. On March 19, 2009, our staff mailed Mr. Palumbo a note advising that since this Commission did not have prior record of receiving a request for cancellation, the effective date of the cancellation would be March 16, 2009, the date we received the letter requesting cancellation and that the 2008 and 2009 RAFs, including statutory late payment charges, would have to be paid in order to receive a voluntary cancellation. The 2008 and 2009 RAFs, including accrued late payment charges, remain unpaid.

For the reasons described above, we deny John Palumbo d/b/a Duck's Back Enterprises' request for voluntary cancellation of its PATS certificate. However, we find it appropriate to involuntarily cancel the pay telephone certificate, effective March 16, 2009, 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.

The cancellation of the PATS certificate in no way diminishes the entity's obligation to pay the applicable RAFs, including any accrued late payment charges. If this Order is not protested, the entity's PATS Certificate No. 5418 shall be cancelled, effective March 16, 2009. If the entity pays the RAFs, including accrued late payment charges, prior to the expiration of the Proposed Agency Action Order, then the cancellation of the entity's PATS certificate shall be voluntary. If the entity fails to protest the Order or pay the RAFs, including accrued late payment charges, prior to the expiration of the Proposed Agency Action Order, then the entity's PATS certificate shall be cancelled administratively, and the collection of the unpaid fees shall be referred to the Florida Department of Financial Services for further collection efforts. If the entity's PATS certificate is cancelled in accordance with this Order, the entity 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 RAFs, including accrued late payment charges, or upon cancellation of the entity's PATS certificate. If John Palumbo d/b/a Duck's Back Enterprises' PATS certificate is cancelled on this Commission's own motion and subsequently decides to reapply for a telecommunications certificate, John Palumbo d/b/a Duck's Back Enterprises shall be required to first pay any outstanding fees, including any 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 by the Florida Public Service Commission that pursuant to Rule 25-24.514, Florida Administrative Code, John Palumbo d/b/a Duck's Back Enterprises' PATS Certificate

No. 5418 is hereby cancelled effective March 16, 2009, on this Commission's own motion for failure to pay the 2008 and 2009 Regulatory Assessment Fees, including accrued late payment charges, 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 John Palumbo d/b/a Duck's Back Enterprises' obligation to pay the applicable Regulatory Assessment Fees, including any accrued late payment charges. If John Palumbo d/b/a Duck's Back Enterprises' PATS certificate is cancelled and the entity subsequently decides to reapply for a telecommunications certificate, that entity shall be required to first pay any outstanding fees, including any accrued statutory late payment charges. It is further

ORDERED that if John Palumbo d/b/a Duck's Back Enterprises pays the Regulatory Assessment Fees, including accrued late payment charges, 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 John Palumbo d/b/a Duck's Back Enterprises does not pay the Regulatory Assessment Fees, including accrued late payment charges, prior to the expiration of the Proposed Agency Action Order, the collection of the Regulatory Assessment Fees shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if John Palumbo d/b/a Duck's Back Enterprises' certificate is cancelled in accordance with this Order, John Palumbo d/b/a Duck's Back Enterprises 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 Fees, 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)
TJB

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.