

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: July 1, 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: 07/14/09 – 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 vacate Order No. PSC-09-0353-PAA-TC, issued on May 26, 2009; cancel John Palumbo d/b/a Duck's Back Enterprises' pay telephone certificate on the Commission's own motion due to bankruptcy with an effective date of March 16, 2009; direct the Division of Administrative Services to request permission from the Florida Department of Financial Services to write off any unpaid Regulatory Assessment Fees, including statutory late payment charges, instead of requesting collection services; and require the company to immediately cease and desist providing telecommunications service in Florida?

Docket No. 090143-TC

Date: July 1, 2009

Recommendation: Yes, Order No. PSC-09-0353-PAA-TC should be vacated and the company's pay telephone certificate should be cancelled on the Commission's own motion due to bankruptcy as listed on Attachment A. (Isler, Brooks)

Staff Analysis: See attached proposed Order.

Issue 2: Should this docket be closed?

Recommendation: Yes, this docket should be closed if no protest is filed and upon issuance of a Consummating Order. (Brooks)

Staff Analysis: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. This docket should then be closed upon issuance of a Consummating Order.

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
VACATING ORDER NO. PSC-09-0353-PAA-TC AND CANCELLING
PAY TELEPHONE COMPANY CERTIFICATE DUE TO BANKRUPTCY

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.

Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) for each certificate or registration if the certificate or registration 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 company requesting cancellation of its CLEC certificate must state its intent and date to pay the current Regulatory Assessment Fee.

On March 16, 2009, this Commission received a letter dated April 7, 2007, from Mr. Palumbo, owner of Duck's Back Enterprises, requesting voluntary cancellation of pay telephone service company (PATS) Certificate No. 5418. Our staff attempted collection of the 2008 and 2009 RAFs, but was unsuccessful.

On May 26, 2009, Order No. PSC-09-0353-PAA-TC was issued, which denied the company a voluntary cancellation and instead cancelled PATS Certificate No. 5418 on this Commission's own motion. On May 28, 2009, the Commission received notice that Mr. Palumbo filed for Chapter 7 bankruptcy protection in the US Bankruptcy Court, Northern District of Florida, Tallahassee Division, on May 15, 2009. The bankruptcy notice stated that there are no assets and that claims should not be filed. Therefore, vacating the proposed agency action order is appropriate.

Pursuant to 11 USCS § 362 (b)(4) of the US 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. RAFs, late payment charges, and penalties owed by a company to the Florida Public Service Commission, as well as monetary settlements of cases resolving issues of failure to pay such fees, are not secured debts and, as a practical matter, are uncollectible in a bankruptcy proceeding where liquidation occurs. Therefore, this Commission would be prevented from collecting the RAFs owed by John Palumbo d/b/a Duck's Back Enterprises and from assessing and collecting a penalty for failure to pay the fees. John Palumbo d/b/a Duck's Back Enterprises owes the 2008, and 2009 RAFs plus statutory late payment charges for the year 2008.

Accordingly, we hold that Order No. PSC-09-0353-PAA-TC, issued on May 26, 2009, shall be vacated. In addition, the company's PATS certificate shall be cancelled on this Commission's own motion due to bankruptcy effective March 16, 2009. Any unpaid Regulatory Assessment Fees shall not be sent to the Florida Department of Financial Services for collection, and permission for this Commission to write off the uncollectible amount shall be requested. The Commission is 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 Order No. PSC-09-0353-PAA-TC, issued on May 26, 2009, is hereby vacated. It is further

ORDERED that PATS Certificate No. 5418 held by John Palumbo d/b/a Duck's Back Enterprises, is hereby cancelled effective March 16, 2009. It is further

ORDERED that the unpaid Regulatory Assessment Fees shall not be sent to the Department of Financial Services for collection. The Division of Administrative Services, instead, shall request permission to write-off the uncollectible amount. It is further

ORDERED that if John Palumbo d/b/a Duck's Back Enterprises' PATS certificate is cancelled in accordance with this Order, the company shall immediately cease and desist providing telecommunications 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.

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.