

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 8, 2004

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

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

RE: Docket No. 030629-TX – Cancellation by Florida Public Service Commission of CLEC Certificate No. 7770 issued to Delta Phones, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, and compliance investigation for apparent violation of Rule 25-22.032(5)(a), F.A.C., Customer Complaints.

AGENDA: 07/20/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030629.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission reconsider its vote from the March 16, 2004, Agenda Conference; grant the company cancellation of its certificate with an effective date of June 17, 2004, due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that any unpaid Regulatory Assessment Fees, including statutory penalty and interest charges, should not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts; and require Delta Phones, Inc. to immediately cease and desist providing competitive local exchange (CLEC) services in Florida?

Recommendation: Yes. (Isler; McKay)

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Staff Analysis: Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of Regulatory Assessment Fees by January 30 of the subsequent year for telecommunications companies, and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Rule 25-24.820, Florida Administrative Code, Revocation of a Certificate, provides that competitive local exchange telecommunications companies must request cancellation from the Commission in writing and either pay the current year's Regulatory Assessment Fee or provide the date it will be paid.

On December 12, 2002, the Division of the Commission Clerk & Administrative Services mailed the 2002 Regulatory Assessment Fee return notice to Delta Phones, Inc. The return form and payment were due by January 30, 2003. On February 21, 2003, the Office of the General Counsel sent a delinquent notice via certified mail for nonpayment of the 2002 fee. The US Postal Service returned the certified receipt, which showed the delinquent notice was signed for and delivered on March 3, 2003. Staff wrote the company on April 11, 2003, and explained that payment for the 2002 fee had not been received and advised it to pay the fee, including statutory late payment charges, by April 30, 2003, to avoid a docket from being established. On June 25, 2003, staff faxed the company a note again requesting payment. No response was received; therefore, Docket No. 030629-TX was established on July 16, 2003.

On July 25, 2003, Ms. Rhonda Walters of Delta Phones, Inc. called staff and advised that the company wished to resolve the docket and asked that information be faxed to her. The 2002 Regulatory Assessment Fee return notice and options to resolve the docket were faxed on the same date. On July 29, 2003, the Commission received the company's payment of the 2002 Regulatory Assessment Fee, including statutory late payment charges. The company reported revenues in the amount of \$405,314 for the period ended December 31, 2002.

On December 1, 2003, the Commission received the company's settlement proposal to pay a \$250 contribution to resolve the docket. After receiving the settlement proposal, staff was notified by the Division of Consumer Affairs that Delta Phones, Inc. had two outstanding complaints. Staff faxed the company the two complaints and requested a response before going forward with the settlement proposal. No response was received from the company.

At the March 16, 2004, Agenda Conference, the Commission voted to accept the company's \$250 settlement proposal to resolve the Regulatory Assessment Fee rule violation and penalize the company \$20,000 for not responding to the two consumer complaints. Prior to the Order being issued, on March 23, 2004, the Commission received notice that Delta Phones, Inc. had filed for Chapter 11 bankruptcy protection on January 8, 2004, and that the case had been converted to a Chapter 7 bankruptcy on March 4, 2004. Based on this information, staff sought and received permission from the Commission not to issue the Proposed Agency Action Order.

On March 24, 2004, staff faxed the Chapter 7 US Bankruptcy Trustee, Mr. Ronald Peterson, a letter and explained the facts of this case. Mr. Peterson stated that he would seek permission from the US Bankruptcy Court to abandon Delta Phones, Inc.'s CLEC certificate. Approval was subsequently granted by the US Bankruptcy Court and on June 17, 2004, the Commission received a letter from Mr. Peterson requesting cancellation of Delta Phones, Inc.'s certificate and

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asking that any unpaid Regulatory Assessment Fees, including statutory penalty and interest charges, be written-off.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.285, 364.336, and 364.337, Florida Statutes. Accordingly, staff recommends that the Commission reconsider its vote at the March 16, 2004, Agenda Conference; grant the company cancellation of its certificate with an effective date of June 17, 2004, due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that the 2003 and 2004 Regulatory Assessment Fees and statutory late payment charges for 2003, should not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts; and require Delta Phones, Inc. to immediately cease and desist providing competitive local exchange services in Florida.

Issue 2: Should this docket be closed?

Recommendation: Yes. (McKay)

Staff Analysis: 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's certificate is cancelled in accordance with the Commission's Order from this recommendation, Delta Phones, Inc. should be required to immediately cease and desist providing competitive local exchange telecommunications services in Florida.