

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of 9278
Communications, Inc. for apparent violation of
Sections 364.02 and 364.04, Florida Statutes.

DOCKET NO. 030696-TI
ORDER NO. PSC-05-0559-PCO-TI
ISSUED: May 20, 2005

ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL

On January 12, 2004, this Commission issued Order No. PSC-04-0022-PAA-TL, a Proposed Agency Action Order Imposing Penalty Upon 9278 Communications, Inc. for Violation of Sections 364.02 and 364.04, Florida Statutes. On February 2, 2004, Norman H. Horton, Jr., Esquire, and Albert T. Gimbel, Esquire, of Messer, Caparello & Self, P.A., filed a Response on behalf of 9278 Communications, Inc. ("9278") to the Notice of Proposed Agency Action and a Petition for Formal Administrative Proceeding. This matter is currently set for an administrative hearing on June 27, 2005.

Counsel for 9278 sought and obtained an order extending the time to March, 18, 2005, for it to respond to Commission Staff's discovery requests. On April 20, 2005, Staff filed a Motion to Compel, asserting that none of the discovery responses had been received from 9278. 9278 did not file a response to the motion to compel discovery and Order No. PSC-05-0497-PCO-TL granting the motion issued on May 5, 2005.

On April 14, 2005, Messrs. Horton and Gimbel and the law firm of Messer, Caparello & Self, P.A., filed a Motion for Leave to Withdraw as Counsel for 9278. On May 10, 2005, counsel filed a Certificate of Service certifying that a copy of the Motion for Leave to Withdraw was served on the client by U.S. Mail on April 21, 2005. In support of the motion, counsel state that 9278 has failed to fulfill, for an extended period of time, an obligation to counsel regarding their service and has not communicated with counsel so as to enable counsel to provide effective representation including a lack of response to requests from counsel for information. Counsel further assert that they cannot provide effective representation or fulfill their obligations as attorneys given the lack of communication from 9278. Therefore, counsel request that the Commission enter an order allowing them to withdraw as counsel of record for 9278. No responses to the Motion were filed, and the response period has expired.

Rule 28-106.105(3), Florida Administrative Code, states that "[o]n written motion served on the party represented and all other parties of record, the presiding officer shall grant counsel of record and qualified representatives leave to withdraw for good cause." I find that Messrs. Horton and Gimbel have set forth good cause in their motion. Therefore, I grant the Motion to Withdraw as Counsel.

Based upon the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that the Motion of Norman H. Horton, Jr., Esquire, and Albert T. Gimbel, Esquire, of Messer, Caparello & Self, P.A., to Withdraw as Counsel for 9278 Communications, Inc. is granted.

DOCUMENT NUMBER-DATE

04956 MAY 20 05

FPSC-COMMISSION CLERK

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 20th day of
May _____, 2005



LISA POLAK EDGAR
Commissioner and Prehearing Officer

(S E A L)

CTM

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.

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.