



Public Service Commission

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DATE: MARCH 22, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (FUDGE) *JFK*
DIVISION OF COMPETITIVE SERVICES (BUYS) *DBB* *AD*

RE: DOCKET NO. 010096-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 6053 ISSUED TO ROYAL PAYPHONES, INC. FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES, 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES, AND 25-24.520, F.A.C., REPORTING REQUIREMENTS

AGENDA: 04/03/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\010096A.RCM

CASE BACKGROUND

- April 20, 1999 - Royal Payphones, Inc. (Royal Payphones) was granted Certificate No. 6053 to provide pay telephone services in the State of Florida.
- March 07, 2000 - Royal Payphones reported intrastate operating revenues of \$241,965 for the period of January 01, 1999 through December 31, 1999 on its Regulatory Assessment Fee Return.
- April 14, 2000 - The Division of Records and Reporting sent Royal Payphones an information update request letter.

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FPSC-RECORDS, REPORTING

- September 6, 2000 through November 16, 2000 - Staff conducted evaluations of eight pay telephones operated by Royal Payphones and subsequently mailed four letters (two certified) to Royal Payphones informing the company of pay telephone service violations pursuant to Rule 25-24.515, Florida Administrative Code, and requesting that Royal Payphones submit the necessary violation correction forms to staff.
- November 17, 2000 - Staff called Mr. Blake Harbison of Royal Payphones and he requested that staff fax the letters and the pay telephone evaluation forms to him. Mr. Harbison also stated he is removing the pay telephones and he would fax a response to staff.
- November 30, 2000 - Both certified letters mailed on November 14 and 16 were returned to the Florida Public Service Commission (FPSC) marked "refused" on the envelope. A notice informing the sender of a new address was also pasted on the envelope. Apparently, Royal Payphones has not updated its mailing address in violation of Rule 25-24.520, Florida Administrative Code.
- December 1, 2000 - Staff faxed the information to Royal Payphones again.
- December 5, 2000 - Staff contacted Royal Payphones and spoke with Mr. Harbison; he stated he would fill out the violation correction forms and mail them to staff.
- December 12, 2001 - The Division of Administration mailed the 2000 Regulatory Assessment Fee (RAF) notice. Payment was due by January 30, 2001.
- December 13, 2000 - Staff contacted Royal Payphones; Mr. Harbison stated he would fax staff the information.
- December 19, 2000 - Staff dialed the telephone numbers for each of the eight pay telephones in question and determined that all of the lines have been disconnected. Staff decided that a show cause for payphone service violations is not necessary since the phones are not in service.
- December 20, 2000 - Staff mailed a certified letter to Royal Payphones requesting a response to the pay telephone evaluations and inquiring about the status of Royal Payphones operations.

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- January 8, 2001 - The certified letter was returned and marked "refused" on the envelope.
- January 24, 2001 - Staff opened this docket to initiate cancellation of Royal Payphones' Certificate of Public Convenience and Necessity.
- February 21, 2001 - The Division of Administration mailed a delinquent RAF notice.
- March 19, 2001 - As of this date, the past due RAFs, including statutory penalty and interest charges, remain unpaid.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.17, 364.183, 364.336, 364.3375, and 364.285, Florida Statutes. Accordingly, staff believes the following recommendation is appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission cancel Pay Telephone Certificate No. 6053 issued to Royal Payphones, Inc. for apparent violation of Rules 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and 25-24.520, Florida Administrative Code, Reporting Requirements?

RECOMMENDATION: Yes. Staff recommends that the Commission cancel Royal Payphones' Pay Telephone Certificate No. 6053 for apparent violation of Rules 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and 25-24.520, Florida Administrative Code, Reporting Requirements. If the Proposed Agency Action is not protested within 21 days of issuance, the company's certificate should be canceled administratively upon issuance of the Consummating Order. If the past due regulatory assessment fees, including statutory penalty and interest charges, are not received within five business days after issuance of the Consummating Order, the amount shall be forwarded to the Office of the Comptroller for collection. **(FUDGE, BUYS)**

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or revoke a company's certificate if a company refuses to comply with Commission rules. Rule 25-24.514(1)(b), Florida Administrative Code, states the Commission may cancel a company's certificate for violation of Commission Rules or Orders. Royal Payphones has apparently violated three of the Commission's rules.

1. 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 penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of Administration's records show that Royal Payphones has not paid its 2000 RAF, plus statutory penalty and interest charges. RAFs for the calendar year 2000 were due by January 30, 2001, and those fees are currently unpaid. Consequently, it appears that Royal Payphones has not complied with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

2. Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Staff has given Royal Payphones several opportunities to reply to pay telephone service evaluations and return the necessary violation correction forms to the Commission. Staff has sent two letters, three certified letters, two faxes, and called the company six times to solicit a written reply. The three certified letters were refused by the addressee. The first two letters were sent to the address listed in the Master Commission Directory (MCD). The third certified letter, dated December 20, 2000, was sent to a new address obtained from a "Notify Sender of New Address" label affixed to the previously returned certified letters. All three certified letters were returned with "returned to sender" stamped on the front of the envelope and "refused" written on the envelope as the reason the letters were returned. On each returned letter, the address was crossed through and the bar code on the bottom of the letter was scratched out with a pen.

In addition, staff spoke to Mr. Blake Harbison of Royal Payphones on three separate days, and each time, Mr. Harbison stated he would send the necessary replies to staff. Staff's most recent contact was on December 13, 2000; Mr. Harbison stated he would fax the information to staff. As of March 21, 2001, staff has not received a fax, or any other written communication from Royal Payphones.

3. Rule 25-24.520, Florida Administrative Code, Reporting Requirements, states:

(1) Each pay telephone service company shall file with the Commission's Division of Telecommunications updated information for the following items within ten days after a change occurs:

- (a) The street address of the certificate holder including number, street name, city, state and zip code, and the mailing address if it differs from the street address.
- (b) Name, title, and phone number of the individual responsible for contact with the Commission.

On April 14, 2000, the Division of Records and Reporting sent an information update request letter to Royal Payphones. The last update entered into the MCD was on April 20, 1999. Two certified letters sent to Royal Payphones at the address listed in the MCD were refused. On October 17, 2000, staff had a telephone conversation with Mr. Dan Wilson. Mr. Wilson has submitted pay telephone violation correction forms for Royal Payphones in the past, but is no longer servicing the company's pay telephones. During the conversation, Mr. Wilson informed staff that the new contact person for Royal Payphones is Blake Harbison and provided staff with a telephone number where Mr. Harbison could be reached.

Blake Harbison is apparently the new contact person for Royal Payphones. However, James Harbison is listed as the company liaison in the MCD. The telephone number staff used to call Mr. Blake Harbison is different than the telephone number listed in the MCD. Furthermore, two of the certified letters that were refused and returned to the Commission had a sticker affixed to the front of the envelope informing the addressee (Royal Payphones) to notify the sender of the new address. Staff has sent Royal Payphones a certified letter to the address printed on the "notify sender of new address" label informing Royal Payphones that it needed to update its company liaison information, but the letter was refused.

Apparently, the company's mailing address, and the name and telephone number of the individual responsible for contact with the Commission have changed. Royal Payphones has not filed the required updated information with the Commission within ten days of the change, and is therefore in apparent violation of Rule 25-24.520, Florida Administrative Code, Reporting Requirements.

Based on Royal Payphones' apparent disregard of staff's inquiries and other apparent rules violations, and the fact that the pay telephone stations Royal Payphones had been operating are disconnected, staff believes that Royal Payphones has apparently ceased operations in Florida. Therefore, staff recommends that the Commission cancel Royal Payphones' Pay Telephone Certificate No. 6053 for apparent violation of Rules 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and 25-24.520, Florida Administrative Code, Reporting Requirements. If the Proposed Agency Action is not protested within 21 days of issuance, the company's certificate should be canceled administratively upon issuance of the Consummating Order. If the past due regulatory assessment fees, including statutory penalty and interest charges, are not received within five business days after issuance of the Consummating Order,

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the amount shall be forwarded to the Office of the Comptroller for collection.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. 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 and Pay Telephone Certificate No. 6053 should be canceled. **(FUDGE)**

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon the issuance of the Consummating Order and cancellation of Pay Telephone Certificate No. 6053.