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Public Service Commission

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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: November 17, 2005

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

FROM: Division of Competitive Markets & Enforcement (Isler) *PI*
Office of the General Counsel (Fordham) *2.17 BIC* *MM*

RE: Docket No. 050651-TC – Compliance investigation of Janice M. Czaikowski, PATS Certificate No. 3279, for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Docket No. 050661-TC – Compliance investigation of Publicall Telecommunications Inc., PATS Certificate No. 5909, for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 11/29/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050651.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission cancel Janice M. Czaikowski's and Publicall Telecommunications Inc.'s pay telephone company (PATS) certificates with an effective date of December 31, 2005, and require the companies to immediately cease and desist providing pay

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FPSC-COMMISSION CLERK

Docket Nos. 050651-TC, 050661-TC

Date: November 17, 2005

telephone service in Florida, for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies?

Recommendation: Yes, the companies' PATS certificates should be cancelled for nonpayment of the 2004 Regulatory Assessment Fee. (Isler; Fordham)

Staff Analysis: See attached proposed order.

Issue 2: Should these dockets 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 any 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 any company's certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing pay telephone service in Florida. If any company fails to pay the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. These dockets should be closed administratively upon cancellation of the company's certificate. (Fordham)

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: Compliance investigation of Janice M. Czaikowski, PATS Certificate No. 3279, for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 050651-TC

In re: Compliance investigation of Publicall Telecommunications Inc., PATS Certificate No. 5909, for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 050661-TC
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR
ISILIO ARRIAGA

NOTICE OF PROPOSED AGENCY ACTION ORDER
CANCELLING PAY TELEPHONE COMPANY CERTIFICATES AND REQUIRING
PAYMENT OF REGULATORY ASSESSMENT FEES

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.

Janice M. Czaikowski currently holds Certificate No. 3279, issued by the Commission on March 12, 1993, authorizing the provision of pay telephone service. Publicall Telecommunications Inc. currently holds Certificate No. 5909, issued by the Commission on September 15, 1998, authorizing the provision of pay telephone service.

The Division of the Commission Clerk & Administrative Services (CCA) advised our staff that the entities had not paid the Regulatory Assessment Fee (RAF) in full required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the years specified below. Also, accrued statutory late payment charges required by Section 350.113(4), Florida Statutes, for the year(s) specified below had not been paid. The entities listed below were scheduled to remit their respective 2004 RAFs by January 31, 2005. In

addition to RAF payment notices sent by CCA, on July 29, 2005, our staff wrote the entities specified below and advised that payment of the 2004 RAF should be paid by August 19, 2005, to avoid dockets from being established. As of November 7, 2005, the entities listed below have not paid the past due RAF, including statutory late payment charges, requested cancellation of their respective certificates as required by Rule 25-24.514, Florida Administrative Code, or proposed a settlement. In addition, each entity has had two prior dockets for the same rule violation in which each entity resolved their respective dockets.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee (RAF) of \$50 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. All entities that apply for certification receive a copy of our rules governing pay telephone service.

Janice M. Czaikowski

Docket No. 951398-TC was established on November 16, 1995, for nonpayment of the 1994 Regulatory Assessment Fee. On January 16, 1996, Order No. PSC-96-0078-FOF-TC was issued, which imposed a \$250 fine and required payment of the 1994 RAF within 30 days of the Order becoming final or cancelled the company's certificate. The company paid the past due RAF and the \$250 fine and the docket was closed.

Docket No. 971247-TC was established on September 25, 1997, for nonpayment of the 1996 Regulatory Assessment Fee. Ms. Czaikowski paid the past due RAF and late payment charges and requested a waiver of the fine due to a serious illness of her daughter. On November 14, 1997, Order No. PSC-97-1436-FOF-TC was issued, which waived the \$500 fine due to the extenuating circumstances and the docket was closed.

Publicall Telecommunications Inc.

Docket No. 010691-TC was established on May 7, 2001, for nonpayment of the 2000 Regulatory Assessment Fee. The company subsequently paid the past due RAF and proposed a \$150 settlement. On October 8, 2001, Order No. PSC-01-1989-AS-TC was issued, which accepted the company's settlement offer. The company paid the settlement and the docket was closed.

Docket No. 030710-TC was established on July 28, 2003, for nonpayment of the 2002 Regulatory Assessment Fee. The company subsequently paid the past due fee and proposed a \$500 settlement. On February 11, 2004, Order No. PSC-04-0142-AS-TC was issued, which accepted the company's settlement offer. The company paid the settlement and the docket was closed.

Analysis

Pursuant to Section 364.285, Florida Statutes, this Commission may impose a penalty or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.514, Florida Administrative Code, establishes the requirements for cancellation of a certificate. The rule provides for this Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders. Since this is the third docket established for nonpayment of the Regulatory Assessment Fees, the companies should be well aware when the fees are due each year. The cancellation of a certificate for a third offense is consistent with a prior Commission decision. In Docket No. 000968-TC, by Order No. PSC-00-1815-PAA-TC, issued October 4, 2000, the Commission cancelled James M. Bracewell d/b/a Southern Tele-Communications' pay telephone certificate for violating the Regulatory Assessment Fee rule in three separate dockets (Nos. 971340-TC, 981273-TC, and 000968-TC). Based on the above, we find that cancellation of Janice M. Czaikowski's and Publicall Telecommunications Inc.'s respective certificates is appropriate. There are no outstanding consumer complaints against Janice M. Czaikowski and Publicall Telecommunications Inc.

<u>ENTITY'S NAME</u>	<u>CERTIFICATE NO.</u>	<u>UNPAID RAFS</u>	<u>UNPAID LATE PAYMENT CHARGES</u>
Janice M. Czaikowski	3279	2004	2003 2004
Publicall Telecommunications Inc.	5909	2004	2004

Decision

Accordingly, we hereby cancel Janice M. Czaikowski's and Publicall Telecommunications Inc.'s pay telephone certificate. If the past due fees, including statutory late payment charges, are not received within fourteen (14) calendar days after the issuance of the Consummating Order, the unpaid fees shall be turned over to the Florida Department of Financial Services for further collection efforts and these dockets shall be closed. The cancellation of the certificates in no way diminishes any entity's obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory late payment charges. If our Order is not protested, the companies' respective PATS certificates are hereby cancelled effective December 31, 2005. If an entity's certificate is cancelled in accordance with our Order, that entity shall immediately cease and desist providing pay telephone service in Florida. We are vested with jurisdiction over this matter 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 Janice M. Czaikowski's Certificate No. 3279 and Publicall Telecommunications Inc.'s Certificate No. 5909 to provide pay telephone service are hereby cancelled, effective December 31, 2005, and the respective docket closed. It is further

ORDERED that the cancellation of an entity's certificate in no way diminishes any of the entities' obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory late payment charges. Any unpaid Regulatory Assessment Fees and accrued statutory late payment charges shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if an entity's certificate is cancelled in accordance with this Order, that entity shall immediately cease and desist providing pay telephone service in Florida. It is further

ORDERED that any protest to the action proposed herein shall specify the entity or entities to which it applies. It is further

ORDERED that if a protest to this Order is filed, the protest shall not prevent the action proposed herein from becoming final with regard to the remaining entity listed in this Order. 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 Director, Division of the Commission Clerk and Administrative Services, 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, these dockets shall be closed upon cancellation of the certificates.

By ORDER of the Florida Public Service Commission this ____ day of _____,

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

LF

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 Director, Division of the Commission Clerk and Administrative Services, 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.