

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: April 20, 2010
TO: Ann Cole, Commission Clerk, Office of Commission Clerk
FROM: Nancy E. Pruitt, Regulatory Analyst III, Division of Regulatory Analysis
RE: E-mail Correspondence for Docket No. 100118-TC

Please place the attached e-mails in the docket file.

RECEIVED-FPSC
 APR 20 PM 2:47
 COMMISSION
 CLERK

- COM _____
- APA _____
- ECR _____
- GCL _____
- RAD _____
- SSC _____
- ADM _____
- OPC _____
- CLK _____

Nonneye

DOCUMENT NUMBER DATE
 03062 APR 20 2010
 FPSC-COMMISSION CLERK

Nancy Pruitt

From: Nancy Pruitt
Sent: Friday, March 12, 2010 10:54 AM
To: 'payfonmarc@aol.com'
Subject: Request for Cancellation

Mr. Higgins - We have received your 2009 Regulatory Assessment Fee and letter requesting cancellation of your Florida payphone certificate, effective 12/31/09. You neglected to pay the late fees: \$5 penalty and \$1 interest. We can cancel your certificate effective 3/3/10 but not 12/31/09.

Florida Statute 364.336 requires payment if your certificate was active for any portion of the calendar year. You will need to pay the 2010 Fee for your company to remain in good standing and be granted a voluntary cancellation. By separate e-mail I will send you the 2010 form.

Please let me know your intentions and what you would like me to do.

Nancy Pruitt
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
850-413-6127
850-413-6128 (fax)

DOCUMENT NUMBER DATE
03062 APR 20 2
FPSC-COMMISSION CLERK

4/15/2010

Nancy Pruitt

From: Nancy Pruitt
Sent: Friday, March 12, 2010 10:56 AM
To: 'payfonmarc@aol.com'
Subject: RAF Form
Attachments: raf-tg995-10-0-r.doc

This e-mail was sent from The Florida Public Service Commission's Regulatory Assessment Fee (RAF) System.

Attached document type: Microsoft Word

Pay Telephone Service Provider Regulatory Assessment Fee Return

Florida Public Service Commission

STATUS:

- Actual Return
- Estimated Return
- Amended Return

PERIOD COVERED:
01/01/2010 TO 12/31/2010

(See Filing Instructions on Back of Form)

TG995-10-0-R
Pinnacle Payphone Corporation
P. O. Box 490
Sharon Center, OH 44274-0490

Please Complete Below If Official Mailing Address Has Changed

FOR PSC USE ONLY

Check # _____
\$ _____ 06-03-001
003001
\$ _____ E
\$ _____ P 06-03-001
004011
\$ _____ I
Postmark Date _____
Initials of Preparer _____

(Name of Company) (Address) (City/State) (Zip)

LINE NO.	ACCOUNT CLASSIFICATION	AMOUNT
1.	Gross Operating Revenue (Florida)	\$ _____
2.	Gross Intrastate Revenue	_____
3.	LESS: Amounts Paid to Other Telecommunications Companies ⁽¹⁾ (see "2. Fees" on back)	(_____)
4.	TOTAL REVENUES for Regulatory Assessment Fee Calculation (Line 2 less Line 3)	\$ _____
5.	Regulatory Assessment Fee Due - (Multiply Line 4 by 0.0020)	_____
6.	Penalty for Late Payment (see "3. Failure to File by Due Date" on back)	_____
7.	Interest for Late Payment (see "3. Failure to File by Due Date" on back)	_____
8.	Extension Payment Fee (see "4. Extension" on back)	_____
9.	TOTAL AMOUNT DUE (MINIMUM \$100.00)	\$ _____ ⁽²⁾
10.	Number of pay telephones in operation at close of period covered by this Return	_____

(1) These amounts must be intrastate only and must be verifiable (see "2. Fees" on back).
(2) Regardless of the gross operating revenue of a company, a minimum annual regulatory assessment fee of \$100 shall be imposed as provided in Section 364.336, Florida Statutes.

I, the undersigned owner/officer of the above-named company, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

(Signature of Company Official) (Title) (Date)

(Preparer of Form - Please Print Name) Telephone Number () Fax Number ()

F.E.I. No. _____

FLORIDA PUBLIC SERVICE COMMISSION

Instructions For Filing Regulatory Assessment Fee Return

(Pay Telephone Service Provider)

1. **WHEN TO FILE:** For companies which owed a total of **\$10,000 or more** of assessment fee for the preceding calendar year, this Regulatory Assessment Fee Return is required twice a year and payment must be filed or postmarked:

On or before July 30 for the six-month period January 1 through June 30, and

On or before January 30 for the six-month period July 1 through December 31.

For companies which owed a total of **less than \$10,000** of assessment fee for the preceding calendar year, this Regulatory Assessment Fee Return and payment must be filed or postmarked:

On or before January 30 for the prior twelve-month period January 1 through December 31.

However, if July 30 or January 30 falls on a Saturday, Sunday, or holiday, the Regulatory Assessment Fee Return may be filed or postmarked on the next business day, without penalty.

2. **FEES:** Each company shall pay 0.0020 of its gross operating revenues derived from intrastate business, as referenced in Rule 25-4.0161(1), F.A.C. Gross Operating Revenues are defined as the total revenues before expenses. Gross Intrastate Operating Revenues are defined as revenues from calls originating and terminating within Florida. Do not deduct any expenses, taxes, or uncollectibles from these amounts other than the amount on Line 3. Annual revenue amounts are to be reported on the return for the period ended December 31.

On Line 3, deduct any amounts paid to another telecommunications company for the use of any telecommunications network (including installation charges) to provide service to its customers. **Do not deduct any taxes, federal subscriber line charges, interstate long distance access charges, or amounts paid for nonregulated services such as voice mail, inside wire maintenance, or equipment purchases/rentals. DEDUCTIONS MUST BE INTRASTATE ONLY AND MUST BE VERIFIABLE.**

3. **FAILURE TO FILE BY DUE DATE:** Failure to file a return by the established due date will result in a penalty being added to the amount of fee due, 5% for each 30 days or fraction thereof, not to exceed a total penalty of 25% (Line 6). In addition, interest shall be added in the amount of 1% for each 30 days or fraction thereof, not to exceed a total of 12% per year (Line 7). A Regulatory Assessment Fee Return must be completed, signed, and filed even if there are no revenues to report or if the minimum amount is due.

When a company fails to timely file a Regulatory Assessment Fee Return, the Commission has the authority to order the company to pay a penalty and/or cancel the company's certificate. The company will have an opportunity to respond to any proposed Commission action.

4. **EXTENSION:** A company, for good cause shown in a written request, may be granted up to a 30-day extension. A request must be made by filing the enclosed *Regulatory Assessment Fee Extension Request* form (PSC/ADM 124), two weeks prior to the filing date. When an extension is granted, a charge shall be added to the amount due (Line 8):

0.75% of the fee to be remitted for an extension of 15 days or less, or

1.5% of the fee for an extension of 16 to 30 days.

In lieu of paying the charges outlined above, a company may file a return and remit payment based upon estimated gross operating revenues. If such return is filed by the normal due date, the company shall be granted a 30-day extension period in which to file and remit the actual fee due without paying the above charges, provided the estimated fee payment remitted is at least 90% of the actual fee due for the period. An automatic 30-day extension to file an actual return may be obtained by checking the "Estimated Return" space in the top left-hand corner on the reverse side.

5. **FEE ADJUSTMENTS:** You will be notified as to the amount and reason for any fee adjustment. Penalty and interest charges may be applicable to additional amounts owed the Commission by reason of the adjustment. The company may file a written request for a refund of any overpayments. The request should be directed to Fiscal Services at the below-referenced address.

6. **MAILING INSTRUCTIONS:** Please complete this form, make a copy for your records, and return the original in the enclosed preaddressed envelope. Use of this envelope should assure a more accurate and expeditious recording of your payment. **Make your check payable to the Florida Public Service Commission.** If you are unable to use the envelope, please address your remittance as follows:

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, FL 32399-0850

ATTENTION: Fiscal Services

7. **ADDITIONAL ASSISTANCE:** If you need additional assistance in preparing your Regulatory Assessment Fee Return or regarding telecommunications facilities, please contact the Division of Regulatory Analysis at (850) 413-6600. This division may be contacted at the above-referenced address, directing correspondence to the attention of the division.

Nancy Pruitt

From: Payfonmarc@aol.com
Sent: Monday, March 15, 2010 11:20 AM
To: Nancy Pruitt
Cc: ttwiss@amcomohio.com
Subject: Re: Request for Cancellation

In a message dated 3/12/2010 10:54:02 A.M. Eastern Standard Time, NPruitt@PSC.STATE.FL.US writes:

Mr. Higgins - We have received your 2009 Regulatory Assessment Fee and letter requesting cancellation of your Florida payphone certificate, effective 12/31/09. You neglected to pay the late fees: \$5 penalty and \$1 interest. We can cancel your certificate effective 3/3/10 but not 12/31/09.

I believe that I properly accounted for and paid the late fee and interest. On our Regulatory Assessment Fee Return I calculated the late fee and interest on the Line 5 amount - Regulatory Fee Due. Since the Total of the Regulatory Fee Due + the late fee + the interest was less than \$100.00 I remitted to \$100.00 minimum

Florida Statute 364.336 requires payment if your certificate was active for any portion of the calendar year. You will need to pay the 2010 Fee for your company to remain in good standing and be granted a voluntary cancellation. By separate e-mail I will send you the 2010 form.

I have reviewed the Florida Statute 364.336 that you cited(see below - is a copy of that statute). The Statute plainly states "**...a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business..**" Although the statute goes on to say a Minimum Amount can be set by the Commission there is no indication that the minimum amount can cause a Company to have to pay more than .25% of Gross operating revenue.

The only way to comply with the statutory requirement not to exceed "**...0.25 percent annually of its gross operating revenues..**" and also impose a minimum of \$100 is to require no payment from companies with gross operating revenues less than \$40,000.00

The current application of the \$100 minimum to our Company with 2009 gross intrastate operating revenues of \$1,379.95. results in a fee of 7.25% - 29 TIMES THE STATUTORY LIMIT!

As for 2010, our company has gross intrastate operating revenues of \$0.00, any minimum fee would result in a violation of the statutory limit specified in Florida Statute 364.336.

The commission's \$100 minimum fee, as currently being applied, is in violation of Florida Law. I respectfully ask for the Commission to review this Statute, refund what our Company has paid over the Statutory requirement for the past 5 years and relieve us of any obligation to pay a 2010 regulatory fee.

By the way, the minimum fee as currently applied probably also violates the Federal Telecom Act's "Barrier to Entry" prohibition as well and the "Non-discriminatory" regulation requirement. How can an individual or business be expected to put a single payphone at their business, for instance, when they have to pay 30 times the fee that a large payphone provider would pay?

Sincerely,
Mark Higgins
President, Pinnacle Payphone Corporation

364.336 Regulatory assessment fees.--Notwithstanding any provisions of law to the contrary, each telecommunications company licensed or operating under this chapter, for any part of the preceding 6-month period, shall pay to the commission, within 30 days following the end of each 6-month period, a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business, except, for purposes of this section and the fee specified in s. 350.113(3), any amount paid to another telecommunications company for the use of any telecommunications network shall be deducted from the gross operating revenue for purposes of computing the fee due. The commission shall by rule assess a minimum fee in an amount up to \$1,000. The minimum amount may vary depending on the type of service provided by the telecommunications company, and shall, to the extent practicable, be related to the cost of regulating such type of company. Differences, if any, between the amount paid in any 6-month period and the amount actually determined by the commission to be due shall, upon motion by the commission, be immediately paid or refunded. Fees under this section may not be less than \$50 annually. Such fees shall be deposited in accordance with s. 350.113. The commission may by rule establish criteria for payment of the regulatory

assessment fee on an annual basis rather than on a semiannual basis.

| Please let me know your intentions and what you would like me to do.

Nancy Pruitt

From: Timisha Brooks
Sent: Wednesday, March 31, 2010 9:19 AM
To: 'Payfonmarc@aol.com'
Subject: RE: Request for Cancellation

Mr. Higgins,

My apologies for the delayed response. Please understand that it is not our intention to fail to acknowledge any portion of Section 364.336, Florida Statutes, especially the portion which states that a **"...a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business..."** However, we are not entitled to read the statute in part, but in its entirety. Therefore, we cannot exclude the requirement in this statute to **"...assess a minimum fee in an amount up to 1,000..."** as well as the requirement that **"...fees under this section may not be less than \$50 annually..."** Commission staff has no power to change Florida Statutes, under any circumstances. The authority to make changes to this statute is held only by the Florida Legislature.

Timisha J. Brooks
Attorney
Competitive Markets and Enforcement
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
tbrooks@psc.state.fl.us

From: Payfonmarc@aol.com [mailto:Payfonmarc@aol.com]
Sent: Thursday, March 18, 2010 3:28 PM
To: Timisha Brooks
Cc: Ray Kennedy; Nancy Pruitt; Beth Salak
Subject: Re: Request for Cancellation

I do not mean any disrespect to any individuals at the Commission or to the Commission itself, but I believe that something is still amiss.

I understand your explanation, however you have completely left out any mention of a key phrase in the statute, **"...a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business.."**

Your email explains what the Commission is currently doing and why, but it fails to reconcile these rules with the clearly stated limitation explicitly enumerated in the statute.

3/31/2010

While you rightly point out that the Commission is "**...required, by statute, to assess Regulatory Assessment Fees...**" it must also be said that the Commission is "**... required by statute...**" not to exceed .25% annually.

While there is great emphasis on the statutory requirement to collect a fee, the statutory limit must be ignored to apply the rules in this way.

What allows one part of the statute to be cited as a must do, but the other part to be ignored?

At first look it seems that the minimum fee and the .25% limit might be contradictory, how can both be complied with? they are both written into the statute, are they not?

In your email you state: "**The statute does not set forth an exclusion for pay telephone service providers whose regulatory assessment fee (when calculated as a percentage of its gross operating revenues) falls below \$100, and cannot be interpreted to do so in this case.**" - I respectfully disagreed, according to the statute it almost has to be interpreted this way. The statute provides no exclusion for the Commission from its limit of .25%.

How does the Commission plan to comply with the statutory limit in 364.336 when .25% of a Company's intrastate gross sales is less than the minimum fee?

Does the Commission have an exemption from this part of the statute to rely on?

Shouldn't a contradiction go in favor of limiting to Government in favor of the Citizen?

I believe that this statute may have been misapplied by the Commission to the detriment of the smallest providers. Sometimes its tough to admit when something has been done incorrectly for so long.

As for my previous agreement to pay the minimum fee, our Company will not fail to pay it legal obligations in this matter. However, I believe that we must contest this matter to its conclusion as the statute is so clear. Although the Commission was not intentionally unjust, it now seems like an injustice to apply the statute in this way.

Mark Higgins
President, Pinnacle Payphone Corporation

In a message dated 3/18/2010 10:54:14 A.M. Eastern Daylight Time, TBrooks@PSC.STATE.FL.US writes:

Mr. Higgins,

I have been assigned to address your concerns about the Regulatory Assessment Fee (RAF) and other charges with regards to your pay telephone. I have carefully reviewed the RAF Form, the emails both sent and received in this matter, as well as the statutes you referenced. As an attorney for the PSC, I hope that I can clarify the interpretation of these statutes to provide a better understanding of why the RAF, penalty and interest are assessed the way that they are. Section 364.336, Florida Statutes, clearly states that the "**commission shall by rule assess a minimum fee in an amount up to \$1,000**". Essentially, this is currently and has continuously been interpreted by the Commission to mean that all pay telephone service providers with an active certificate for any portion of the year must pay a minimal fee for their ability to operate. The statute **does not** set forth an exclusion for pay telephone service providers whose regulatory assessment fee (when calculated as a percentage of its gross operating revenues) falls below \$100, and cannot be interpreted to do so in this case.

Section 253 of the Federal Telecommunications Act of 1996 (which you referred to as the Barrier to Entry prohibition), which states "**no state or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service**", is also inapplicable here. Section 364.336, Florida Statutes does not in any way prohibit or have the effect of prohibiting your ability to provide pay telephone service in this state.

3/31/2010

Additionally, please understand that we are required, by statute, to assess Regulatory Assessment Fees, and that the PSC's authority to waive these fees is extremely limited. Specifically, our requirement to assess Regulatory Assessment Fees, Interest and Penalties are set forth in Section 350.113, F.S., which states that

“each regulated company under the jurisdiction of the commission, which company was in operation for the preceding 6-month period, shall pay to the commission within 30 days following the end of each 6-month period, commencing June 30, 1977, a fee based upon the gross operating revenues for such period. The fee shall, to the extent practicable, be related to the cost of regulating such type of regulated company...” “...In no event shall payments under this section be less than \$25 annually...” “...The commission shall provide each regulated company with written notice of the date that payment of the fee is due at least 45 days prior to such date. If any regulated company fails to pay the required fee by such date, the commission shall estimate the amount of fee due from such information as it may be able to obtain from any source and shall add 5 percent of such amount to the fee as a penalty if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which the failure continues, not to exceed a total penalty of 25 percent. The commission shall collect the fee and penalty, plus interest and all costs of collection, from the regulated company...”

This statute, like Section 364.336, F.S., does not provide any exceptions based upon the amount of gross operating revenues generated by a company. The statute ***also does not*** give us discretion to excuse a RAF when a certificate is cancelled part way through the year.

Finally, I will note that on at least two occasions, you have agreed to payment of this “minimum fee”. You agreed to this “minimum fee” in your acknowledgment signed and attached to your PATS application, and also in failing to protest as instructed to Order No. PSC-04-0484-PAA-TC, which granted Pinnacle Payphone Corporation's Certificate to provide pay telephone services. Order No. PSC-04-0484-PAA-TC clearly states that “under Section 364.336, Florida Statutes, certificate holders must pay a minimum Annual Regulatory Assessment Fee (RAFs)... if the certificate was active during any portion of the calendar year.

I hope this clarifies your concerns about the remaining fees, penalty and interest required to be paid in order to cancel your PATS certificate. Please feel free to contact me should you have any other questions or concerns.

Timisha J. Brooks
Attorney
Competitive Markets and Enforcement
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
tbrooks@psc.state.fl.us