

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida
Public Service Commission of Pay
Telephone Certificate No. 3271
issued to Pay Phone
Distributors, Inc. for violation
of Rules 25-4.0161, F.A.C.,
Regulatory Assessment Fees;
Telecommunications Companies,
and 25-4.043, F.A.C., Response
to Commission Staff Inquiries.

DOCKET NO. 981230-TC
ORDER NO. PSC-98-1690-FOF-TC
ISSUED: December 15, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING FINE AND REQUIRING PAYMENT OF REGULATORY
ASSESSMENT FEES, OR CANCELING PAY TELEPHONE CERTIFICATE

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.

Pay Phone Distributors, Inc. (Pay Phone Distributors) currently holds Certificate of Public Convenience and Necessity No. 3271, issued by the Commission on February 12, 1993, authorizing the provision of pay telephone service. After researching Pay Phone Distributors' account and status with the Commission, it was determined that Pay Phone Distributors had failed to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code; and Rule 25-4.043, Florida Administrative Code.

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FPSC RECORDS/REPORTING

Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees

Pay Phone Distributors has not paid the regulatory assessment fees required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the year 1997, nor statutory penalties and interest charges for the years 1993, 1994, 1995, and 1997.

Under Section 364.336, Florida Statutes, certificate holders must pay a minimum annual regulatory assessment fee 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. All entities that apply for certification receive a copy of our rules governing pay telephone service and an affidavit in which the applicants attest that the rules have been received and understood by the applicant. This affidavit must be attached to the application in order for the application to be processed.

The Regulatory Assessment Fee forms are mailed to the entities in December of every year, for the period of January 1, through December 31. Pay Phone Distributors has been given adequate opportunity to pay. To date, Pay Phone Distributors has not paid the required fees. Thus, it appears that Pay Phone Distributors has violated Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code.

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries

Rule 25-4.043 requires companies to respond to inquiries from Commission staff within 15 days. Pay Phone Distributors has failed to respond to four written inquiries, two of which were certified, relating service evaluations performed on its payphones. Our staff sought to contact Pay Phone Distributors by telephone. Pay Phone Distributors assured our staff that it would respond to our inquiries to avoid the cancellation of its certificate. To date, Pay Phone Distributors has not responded. Thus, it appears that Pay Phone Distributors has violated Rule 25-4.043, Florida Administrative Code.

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Conclusion

For the reason described above, pursuant to Rule 25-24.514(1)(b) and (c), Florida Administrative Code, we find it appropriate to cancel Pay Phone Distributors' certificate, unless Pay Phone Distributors pays a \$500 fine for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, and remits all past due regulatory assessment fees, along with statutory penalties and interest charges, to the Florida Public Service Commission. We also find it appropriate to assess a \$10,000 fine to Pay Phone Distributors for failure to comply with Rule 25-4.043, Florida Administrative Code.

Pay Phone Distributors must comply with these requirements within five business days from the date this Order becomes final. The fine will be remitted to the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.516, Florida Statutes.

When the appropriate fees, statutory penalties, interest charges, and fines are received, this Docket shall be closed. Should Pay Phone Distributors fail to comply with this Order within five business days from the date this Order becomes final, Pay Phone Distributors shall have its certificate canceled; the \$10,000 fine shall be forwarded to the Office of the Comptroller for collection; and the Docket shall be closed. The cancellation of the certificate and the closing of the Docket in no way diminishes Pay Phone Distributors' obligation to pay applicable delinquent regulatory assessment fees, statutory penalties, and interest charges.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Pay Phone Distributors, Inc. must pay the past due regulatory assessment fees, statutory penalties, interest charges, and a \$500 fine to the Florida Public Service Commission for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, within five business days from the date this Order becomes final. The fine will be transmitted to the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that the cancellation of the certificate and the closing of the docket in no way diminishes Pay Phone Distributors,

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Inc.'s obligation to pay applicable delinquent regulatory assessment fees, statutory penalties, and interest charges. It is further

ORDERED that Pay Phone Distributors, Inc. must pay a \$10,000 fine to the Florida Public Service Commission for failure to comply with Rule 25-4.043, Florida Administrative Code, within five business days from the date this Order becomes final. The fine will be transmitted to the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that should Pay Phone Distributors, Inc. fail to comply with this Order, Pay Phone Distributors, Inc.'s certificate shall be canceled, the \$10,000 fine shall be assessed, and the Docket shall be closed. The fine shall be forwarded to the Office of the Comptroller for collection. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed upon payment of the fines, and fees, or upon cancellation of the certificate and assessment of the \$10,000 fine.

By ORDER of the Florida Public Service Commission this 15th day of December, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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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.

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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 5, 1999.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.