

MEMORANDUM

December 31, 1998

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PEÑA) *YMP MK3*

RE: DOCKET NO. 981306-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 4171 ISSUED TO RELIABLE PAY-PHONE COMMUNICATIONS, 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.

99-0009-FOF-TC

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER IMPOSING FINES AND REQUIRING PAYMENT OF REGULATORY ASSESSMENT FEES, OR CANCELING PAY TELEPHONE CERTIFICATE, to be issued in the above-referenced docket. (Number of pages in order - 6)

KMP/anr
Attachment
cc: Division of Communications
I: 981306.kmp

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida Public Service Commission of Pay Telephone Certificate No. 4171 issued to Reliable Pay-Phone Communications, 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. 981306-TC
ORDER NO. PSC-99-0009-FOF-TC
ISSUED: January 4, 1999

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 FINES 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.

Reliable Pay-Phone Communications, Inc. (Reliable Pay-Phone) currently holds Certificate of Public Convenience and Necessity No. 4171, issued by the Commission on May 18, 1995, authorizing the provision of pay telephone service. The Division of Administration notified our staff by memorandum that Reliable Pay-Phone had not paid its regulatory assessment fees. After researching Reliable Pay-Phone's account and status with the Commission, it was

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determined that Reliable Pay-Phone 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.

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

Reliable Pay-Phone 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 year 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. Reliable Pay-Phone has been given adequate opportunity to pay. To date, Reliable Pay-Phone has not paid the required fees. Thus, it appears that Reliable Pay-Phone 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. Reliable Pay-Phone has failed to respond to two certified written inquiries (August 10, 1998 and September 8, 1998), concerning a consumer complaint. The US Post Office returned both receipts which showed that the letters were signed for and delivered to Reliable Pay-Phone. To date, Reliable Pay-Phone has not responded to the written inquiries nor to the

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consumer complaint. Thus, it appears that Reliable Pay-Phone has violated Rule 25-4.043, Florida Administrative Code.

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 Reliable Pay-Phone's certificate, unless Reliable Pay-Phone 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 Reliable Pay-Phone for failure to comply with Rule 25-4.043, Florida Administrative Code.

Reliable Pay-Phone 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 Reliable Pay-Phone fail to comply with this Order within five business days from the date this Order becomes final, Reliable Pay-Phone 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 Reliable Pay-Phone's 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 Reliable Pay-Phone Communications, 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

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ORDERED that the cancellation of the certificate and the closing of the docket in no way diminishes Reliable Pay-Phone Communications, Inc.'s obligation to pay applicable delinquent regulatory assessment fees, statutory penalties, and interest charges. It is further

ORDERED that Reliable Pay-Phone Communications, 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 Reliable Pay-Phone Communications, Inc. fail to comply with this Order, Reliable Pay-Phone Communications, 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.

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By ORDER of the Florida Public Service Commission this 4th day
of January, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

KMP

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 25, 1999.

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

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By ORDER of the Florida Public Service Commission this 4th day
of January, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

KMP

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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 25, 1999.

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

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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.