

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida Public Service Commission of Interexchange Telecommunications Certificate No. 7814 issued to West End Communications Inc. for apparent violations of Rules 25-4.0161(1), F.A.C., Regulatory Assessment Fees; Telecommunications Companies; 25-4.043, F.A.C., Response to Commission Staff Inquiries; and 25-24.480(2), F.A.C., Records and Reports; Rules Incorporated.

DOCKET NO. 020268-TI
ORDER NO. PSC-02-0737-PAA-TI
ISSUED: May 31, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER CANCELING INTEREXCHANGE TELECOMMUNICATIONS
CERTIFICATE FOR VIOLATION OF RULES 25-4.0161(1), 25-4.043, AND
25-24.480(2), FLORIDA ADMINISTRATIVE CODE

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.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

I. CASE BACKGROUND

On May 30, 2001, West End Communications Inc. (West End) obtained Florida Public Service Commission Interexchange Telecommunications (IXC) Certificate No. 7814.

During the period of January 8, 2002 to February 22, 2002, the Division of Consumer Affairs received three complaints regarding West End's prepaid phone cards being out of service and the company being unreachable. On January 24, 2002, our staff mailed a certified letter to West End requesting information based on the results of a test our staff conducted on prepaid calling cards branded Tropical Wave and 2 Way USA. The certified letter was returned by the United States Post Office indicating the occupant had moved, leaving no forwarding address.

Subsequently, on February 14, 2002, our staff contacted Mr. Ronald Davis, Attorney for West End, regarding a customer complaint. Mr. Davis stated that the company was no longer in business. Our staff provided instructions on how to cancel the company's IXC certificate. On the same day, Mr. Martin Kalchstein, the company President, contacted our staff and stated he would personally reimburse the customer who filed the complaint.

On February 20, 2002, the Division of the Commission Clerk & Administrative Services mailed a delinquency notice, certified, to West End for failure to pay the 2001 Regulatory Assessment Fees. The certified letter was returned by the United States Post Office. On March 25, 2002, our staff again contacted Mr. Ronald Davis, informing him that Mr. Kalchstein neither filed the paperwork to cancel the certificate, nor responded to the consumer complaint. In addition, our staff faxed Mr. Davis two additional complaints consumers filed against West End.

After not receiving a voluntary cancellation request from West End, responses to the consumer complaints and staff's inquiries, and no payment for the 2001 RAF, staff opened this docket on March 26, 2002, to cancel West End's IXC Certificate No. 7814.

The Florida Public Service Commission is vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285, 364.336 and 364.337, Florida Statutes.

II. ANALYSIS

Pursuant to Section 364.285, Florida Statutes, this Commission may impose a penalty or revoke a company's certificate if a company refuses to comply with Commission rules. Rule 25-24.514(1)(b), Florida Administrative Code, authorizes this Commission to cancel a company's certificate for violation of Commission rules or orders. West End has apparently violated three of our rules.

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 the Commission Clerk and Administrative Services records show that West End has not paid its 2001 RAF, plus statutory penalty and interest charges. RAFs for the calendar year 2001 were due by January 30, 2002, and those fees are currently unpaid. Consequently, it appears that West End has not complied with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

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.

Our staff has attempted to contact West End on several occasions regarding consumer complaints and tests of the company's prepaid calling services. Letters were mailed to the address listed in the Master Commission Directory (MCD) and attempts were made to send facsimiles to the number listed in MCD. All letters were returned by the United States Postal Service with "returned to sender" stamped on the front of the envelopes and the telephone numbers for facsimile, as well as voice, were not in service.

On February 14, 2002, our staff spoke with Mr. Martin Kalchstein, the company President, who stated that he would personally reimburse the Florida consumer that filed a complaint. We have not received any communication from West End and none of the consumer complaints have been addressed.

Rule 25-24.480(2), Florida Administrative Code, Records and Reports; Rules Incorporated:

(2) Each company shall file updated information for the following items with the Division of Competitive Markets and Enforcement and the Division of the Commission Clerk and Administrative Services within 10 days after such changes occur.

(a) The address of the certificate holder's main corporate and Florida offices (if any) including street name and address and post office box, city, state and zip code.

(b) Telephone number, name, and address of the individual who is to serve as primary liaison with the Commission in regards to the ongoing Florida operations of the certificated company.

The last update entered into the MCD was on May 30, 2001. All correspondence sent to West End at the address listed in the MCD were returned by the United States Post Office. Through conversations with the company President, Mr. Martin Kalchstein and the Attorney, Mr. Ronald Davis, our staff learned that the company has completely dissolved.

Apparently, the company's mailing address, name and telephone number of the individual responsible for contact with this Commission are incorrect, and have been since at least February 14, 2002. West End has not filed the required updated information with this Commission within ten days of the change, and is therefore in apparent violation of Rule 25-24.480(2), Florida Administrative Code, Records and Reports; Rules Incorporated.

In Docket No. 010096-TC this Commission issued Order No. PSC-01-1031-PAA-TC on April 26, 2001, cancelling Royal Payphone Inc.'s pay telephone certificate for failing to pay RAFs, failing to

update its contact information, and failing to respond to staff's inquiries. The facts in this docket are consistent with that order.

Based on the above, we hereby cancel West End's IXC Certificate No. 7814 for apparent violations of Rule Nos. 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and 25-24.480(2), Florida Administrative Code, Records and Reports; Rules Incorporated. If the Proposed Agency Action Order is not protested within 21 days of issuance, the company's certificate should be canceled administratively upon issuance of the Consummating Order. If West End's certificate is canceled in accordance with this order, West End should be required to immediately cease and desist providing IXC telecommunications service in Florida. If the past due regulatory assessment fees, including statutory penalty and interest charges, are not received within fourteen calendar days after issuance of the Consummating Order, the amount shall be forwarded to the Office of the Comptroller for collection.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that West End Communications Inc.'s Certificate No. 7814 to provide Interexchange Telecommunications services shall be canceled upon the issuance of a Consummating Order. It is further

ORDERED that the provision of this Order, cancelling Certificate No. 7814 to provide Interexchange Telecommunications services, is issued as proposed agency action and 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 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" attached hereto. It is further

ORDERED that West End Communications Inc. shall return to this Commission the Order granting authority to provide Interexchange

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Telecommunications services and remit Regulatory Assessment Fees for the year 2001. It is further

ORDERED that 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. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 31st day of May, 2002.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(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 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.

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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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 21, 2002.

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.