

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida Public Service Commission of PATS Certificate No. 1697 issued to Lyndon C. Scherr for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 021071-TC

In re: Cancellation by Florida Public Service Commission of PATS Certificate No. 7793 issued to Jon Adams for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 021072-TC

In re: Cancellation by Florida Public Service Commission of PATS Certificate No. 8083 issued to United Payphone Owners, LLP for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 021074-TC
ORDER NO. PSC-02-1790-PAA-TC
ISSUED: December 19, 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 PAY TELEPHONE CERTIFICATES INVOLUNTARILY

DOCUMENT NUMBER-DATE

13811 DEC 19 02

FPSC-COMMISSION CLERK

ORDER NO. PSC-02-1790-PAA-TC
DOCKETS NOS. 021071-TC, 021072-TC, 021074-TC
PAGE 2

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.

The Division of the Commission Clerk and Administrative Services advised our staff that the entities listed below had not paid the Regulatory Assessment Fees (RAFs) required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the year(s) specified below. Also, accrued statutory penalties and interest charges for late RAFs payments for the year(s) specified below had not been paid. The entities listed below were scheduled to remit their respective RAFs by January 30, 2002.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAFs 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 RAFs 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.

Each of the companies listed below wrote us a letter and requested cancellation of their respective pay telephone certificates except in Docket No. 021072-TC. In that case, Mr. Jon Adams called and requested cancellation of his certificate. In addition, the companies stated that they either had never begun operations or were no longer in the pay telephone business. We wrote each company listed below and explained that the companies needed to comply with Rule 25-24.514(2)(a), Florida Administrative Code. Each of the companies listed below have not complied. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the obligation to pay Regulatory Assessment Fees, including statutory penalty and

interest charges, if the certificate was active during any portion of the calendar year, including the year of cancellation.

These entities have not complied with Rule 25-24.514(2), Florida Administrative Code, which states:

(2) If a certificated company desires to cancel its certificate, it shall request cancellation from the Commission in writing and shall provide the following with its request:

(a) Statement of intent and date to pay Regulatory Assessment Fee.

(b) Statement of why the certificate is proposed to be cancelled.

Accordingly, since each of the entities' respective certificates remain active until each entity requests a voluntary cancellation pursuant to Rule 25-24.514(2), Florida Administrative Code, or we involuntarily cancel the certificate, the entities are responsible for the RAFs. As of the date of the vote, the entities continue to be in violation of our rules for nonpayment of RAFs as follows:

<u>ENTITY'S NAME</u>	<u>YEAR RAFs UNPAID</u>	<u>YEAR PENALTY AND INTEREST UNPAID</u>	<u>CERTIFICATE NO.</u>	<u>EFFECTIVE DATE</u>
Lyndon C. Scherr	2002		1697	May 30, 2002
Jon Adams	2001 and 2002	2001	7793	June 27, 2002
United Payphone Owners, LLP	2002		8083	September 23, 2002

For the reasons described above, pursuant to Rule 25-24.514(1)(b) and (c), Florida Administrative Code, we deny each of the entities' request for voluntary cancellation of Pay Telephone certificates for failure to comply with the provisions of Rule 25-

ORDER NO. PSC-02-1790-PAA-TC
DOCKETS NOS. 021071-TC, 021072-TC, 021074-TC
PAGE 4

24.514(2), Florida Administrative Code. However, we find it appropriate to involuntarily cancel the certificates listed below, effective on the dates shown, for failure to pay RAFs pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code.

Since these entities are no longer in business, there would be no purpose in requiring them to pay a penalty. By involuntarily canceling each of the entities' certificate, however, we would be able to track these entities should any apply for another certificate with us in the future. The cancellation of the certificates and the closing of the dockets in no way diminishes any of the entities' obligation to pay applicable delinquent RAFs, statutory penalties, and interest charges. The collection of the past due fees shall be referred to the Office of the Comptroller for further collection efforts. If an entity's certificate is canceled in accordance with this Order, that entity shall immediately cease and desist providing Alternative Access Vendor services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 364.336 and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the requests for voluntary cancellation of Pay Telephone certificates listed herein are hereby denied. It is further

ORDERED that pursuant to Rule 25-24.514(1)(b) and (c), Florida Administrative Code, the Pay Telephone certificates listed herein are hereby canceled, effective on the dates shown above, for failure to comply with Rule 25-24.514(2), Florida Administrative Code; Section 364.336, Florida Statutes; and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the cancellation of the certificate in no way diminishes any of the entities' obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory penalties and interest charges. The collection of the past due fees shall be referred to the Office of the Comptroller for further collection efforts. It is further

ORDER NO. PSC-02-1790-PAA-TC
DOCKETS NOS. 021071-TC, 021072-TC, 021074-TC
PAGE 5

ORDERED that if an entity's certificate is canceled in accordance with this Order, that entity shall immediately cease and desist providing Pay Telephone services 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 is filed as to the involuntary cancellation of the certificate of any particular entity or entities, that protest shall not prevent the action proposed herein from becoming final with regard to the remaining entities 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.

By ORDER of the Florida Public Service Commission this 19th Day of December, 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)

LHD

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 January 9, 2003.

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.