

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida Public Service Commission of CLEC Certificate No. 5742 issued to The Mobile Phone Company, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Docket No. 030619-TX
Order No. PSC-04-0075-PAA-TX
Issued: January 26, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

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.

I. Background

The Mobile Phone Company, Inc. obtained Florida Public Service Commission Competitive Local Exchange Telecommunications Company (CLEC) Certificate No. 5742 on December 5, 1998. On January 30, 2002, we received the company's Regulatory Assessment Fees (RAFs) return form for the period ended December 31, 2001. The company reported revenues in the amount of \$26,559.

On December 12, 2002, the Division of the Commission Clerk & Administrative Services (CCA) mailed the 2002 RAFs return form. Payment was due January 30, 2003. On February 21, 2003, the Office of the General Counsel mailed a delinquent notice. The US Postal Service

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returned the certified receipt, which showed the delinquent notice was signed for by Orlando Rodriguez and delivered on February 24, 2003.

On March 19, 2003, CCA notified the Division of Competitive Markets and Enforcement (CME) staff that this company had not paid the 2002 RAF. On April 11, 2003, our CME staff wrote the company at the address on file in the Master Commission Directory and explained that payment for the RAF needed to be paid by April 30, 2003, to avoid an enforcement docket from being established. On June 23, 2003, our CME staff called the telephone number on file for the company and left a voice mail message. The fax number had been disconnected. On July 3, 2003, our CME staff wrote the company a letter attempting collection of the 2002 RAF prior to establishing a docket.

On July 15, 2003, the docket was established for nonpayment of the 2002 RAF, including statutory late payment charges, and the balance of the 2001 RAF. The Division of Consumer Affairs (CAF) advised CME staff on August 25, 2003, that The Mobile Phone Company, Inc. had one complaint that required additional information before it could be closed out.

On September 4, 2003, Mr. Edwin Altamirano, President of the company, left a voice mail message, advising that he wanted to resolve this docket. Our CME staff returned the call and left a voice mail message. On October 6, 2003, our CME staff faxed the company a note explaining what needed to be done to resolve this docket and included the 2002 RAF return form. On November 11, 2003, our CME staff wrote the company a final time advising what needed to be done to resolve this docket. As of December 9, 2003, the company had not paid the past due amount or provided the additional information on the one pending customer complaint.

We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, 364.285, and 364.337, Florida Statutes.

II. Cancellation

The Mobile Phone Company, Inc. has not paid its 2002 RAF, plus statutory late payment charges, and has a history of late payments. Since the company obtained its certificate, effective December 5, 1998, the company has paid its RAFs after the due date four out of five years. The only year, 2001, that payment was postmarked timely, the company did not pay the full amount of the minimum payment.

In addition, two other dockets were established for nonpayment of the RAFs. Docket No. 992001-TX was established on December 22, 1999, for nonpayment of the 1998 RAF. On April 28, 2000, Order No. PSC-00-0845-PAA-TX was issued, which imposed a \$500 penalty or cancelled the company's certificate. The company subsequently paid the past due RAF and proposed a \$100 settlement. On June 13, 2000, Order No. PSC-00-2037-AS-TX was issued,

which accepted the company's settlement offer. The company subsequently paid the settlement and the docket was closed.

Docket No. 011146-TX was established on August 23, 2001, for nonpayment of the 2000 RAF. The company paid the past due RAF and proposed a \$500 settlement. On December 10, 2001, Order No. PSC-01-2382-AS-TX was issued, which accepted the company's settlement offer. In its settlement offer, the company proposed to pay future RAFs in a timely manner. The company subsequently paid the settlement and the docket was closed.

Since this is the third docket established for nonpayment of the RAFs, the company should be well aware when the fees are due each year. The cancellation of a certificate for a third offense is consistent with our prior Commission decision¹. Based on the above, we find that cancellation of this company's certificate is appropriate.

Therefore, it appears The Mobile Phone Company, Inc. has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, and is not in compliance with its previous settlement proposal. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the obligation to pay RAFs, including statutory late payment charges, if the certificate was active during any portion of the calendar year, including the year of cancellation.

Accordingly, we find it appropriate to cancel The Mobile Phone Company, Inc.'s CLEC Certificate No. 5742 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, effective as of December 31, 2003. If the past due fee, including statutory late payment charges, is not received within fourteen (14) calendar days after the issuance of the Consummating Order, the amount shall be turned over to the Florida Department of Financial Services for further collection efforts. If this Order is not protested, The Mobile Phone Company, Inc.'s CLEC Certificate No. 5742 shall be cancelled administratively. If The Mobile Phone Company, Inc.'s certificate is cancelled in accordance with this Order, The Mobile Phone Company, Inc. shall be required to immediately cease and desist providing competitive local exchange services in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that The Mobile Phone Company, Inc.'s CLEC Certificate No. 5742 shall be cancelled for apparent violation of Rule 25-4.0161,

¹ In Docket No. 000968-TC, by Order No. PSC-00-1815-PAA-TC, issued October 4, 2000, this Commission cancelled James M. Bracewell d/b/a Southern Tele-Communications' pay telephone certificate for violating the RAF rule in three separate dockets (Nos. 971340-TC, 981273-TC, and 000968-TC).

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Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, effective as December 31, 2003. It is further

ORDERED that if the past due fee, including statutory late payment charges, is not received within fourteen (14) calendar days after the issuance of the Consummating Order, the amount shall be turned over to the Florida Department of Financial Services for further collection efforts. It is further

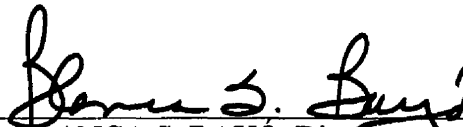
ORDERED that unless this Order is protested, The Mobile Phone Company, Inc.'s CLEC Certificate No. 5742 shall be cancelled administratively. It is further

ORDERED that if The Mobile Phone Company, Inc.'s certificate is cancelled in accordance with this Order, The Mobile Phone Company, Inc. shall immediately cease and desist providing competitive local exchange services in Florida.

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, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of January, 2004.


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

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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.

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 February 16, 2004.

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.