

BEFORE THE PUBLIC SERVICE COMMISSION

| | |
|---|---|
| In re: Compliance investigation of Gene McDonald d/b/a McDonald Communications for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040399-TC |
| In re: Compliance investigation of Keith R. Zinke & Michael Singletary d/b/a Communication Partners for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040402-TC |
| In re: Compliance investigation of Payphone Partners, Inc. for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040404-TC |
| In re: Compliance investigation of Roberta Rich d/b/a Street Phones Co for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. | DOCKET NO. 040405-TC ORDER NO. PSC-04-0823-PAA-TC ISSUED: August 23, 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

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING PENALTIES AND REQUIRING PAYMENT OF
DELINQUENT REGULATORY ASSESSMENT FEES, OR CANCELING
PAY TELEPHONE TELECOMMUNICATIONS CERTIFICATES

BY THE COMMISSION:

DOCUMENT NUMBER-DATE

09183 AUG 23 3

FPSC-COMMISSION CLERK

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.

Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of Regulatory Assessment Fees (RAFs) by January 30 of the subsequent year for telecommunications companies, and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Rule 25-24.514(2), Florida Administrative Code, Cancellation of a Certificate, provides that pay telephone companies must request cancellation from this Commission in writing and either pay the current year's RAF or provide the date it will be paid.

On December 12, 2003, the Division of the Commission Clerk & Administrative Services mailed the 2003 Regulatory Assessment Fee return notice to the companies listed below. Payment of each of the companies' RAFs was due by January 30, 2004. This Commission received correspondence from each of the companies listed below requesting cancellation of their respective certificates. Our staff wrote each of the companies listed below and explained that voluntary cancellation could not be recommended until each company complied with the RAF and Cancellation rules. As of July 8, 2004, none of the companies listed below have fully complied with Rules 25-4.0161 and 25-24.514(2), Florida Administrative Code.

| <u>ENTITY'S NAME</u> | <u>CERT. NO.</u> | <u>EFFECTIVE DATE OF CANCELLATION</u> | <u>PAST DUE RAFS/P&I</u> |
|---|------------------|---|--|
| Gene McDonald d/b/a McDonald Communications | 3608 | 03/09/04 | 2004-RAF |
| Keith R. Zinke & Michael Singletary d/b/a Communication Partners | 5577 | 02/25/04 | 1998-P&I 2003-RAF 2003-P&I 2004-RAF |
| Payphone Partners, Inc. | 7829 | 03/10/04 | 2003-RAF 2003-P&I 2004-RAF |
| Roberta Rich d/b/a Street Phones Co | 8202 | 12/22/03 | 2003-RAF 2003-P&I |

This Commission is vested with jurisdiction over these matters pursuant to Sections 364.285, 364.336, and 364.3375, Florida Statutes. Pursuant to Section 364.336, Florida Statutes, cancellation of a company's certificate does not relieve the company's obligation to pay RAFs, including statutory penalty and interest charges, if the certificate was active during any portion of the calendar year, including the cancellation year. For the reasons described above, this Commission shall deny the above-listed companies voluntary cancellation of their respective certificates and instead, on this Commission's own motion, cancel the companies' respective certificates with prejudice.

This Order will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by this Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute shall be deemed stipulated. If any of the above-listed companies fail to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts shall be deemed admitted and the right to a hearing waived. If any of the above-listed companies fail to pay the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, each company's respective certificate, as listed above, shall be cancelled administratively and the collection of the past due fees shall be referred to the Department of Financial Services for further collection efforts. If any company's certificate as listed above is cancelled in accordance with this Commission's Order, the respective company shall be required to immediately cease and desist providing pay telephone services in Florida. A protest in one docket shall not prevent the action in a separate docket from becoming final.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each of the identified companies is hereby assessed penalties, as listed above, for each apparent violation of Section 364.336, Florida Statutes, as implemented by Rule 25-4.0161, Florida Administrative Code. 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 should any of the companies fail to timely protest this Order, the facts shall be deemed admitted, the right to a hearing waived, and the penalties and statutory interest shall be deemed assessed. It is further

ORDERED that any protest must identify with specificity the issues in dispute. In accordance with Section 120.80(13)(b), Florida Statutes, issues not in dispute will be deemed stipulated. It is further

ORDERED that should any company fail to timely protest this Order, payment of the penalties and statutory interest must be received within fourteen calendar days after the issuance of the Consummating Order. It is further

ORDERED that if this Order is not protested and the penalties and statutory interest are not received within fourteen calendar days of the issuance of the Consummating Order, the penalties and statutory interest shall be referred to the Department of Financial Services for further collection efforts and the companies shall be required to cease and desist providing pay telephone services in Florida. A protest in one docket shall not prevent the action in a separate docket from becoming final. It is further

ORDERED that if this Order is not timely protested, this Docket shall be closed administratively upon payment of the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order; (2) cancellation of each companies' respective certificate; or (3) referral of each companies' penalties and statutory interest to the Department of Financial Services for further collection efforts.

By ORDER of the Florida Public Service Commission this 23rd day of August, 2004.



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

(S E A L)

KS

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 September 13, 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.