

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Acknowledgment of cancellation of IXC Registration No. TJ230 by Radiant Telecom, Inc., effective August 2, 2005. | DOCKET NO. 050526-TI
| ORDER NO. PSC-05-1238-PAA-TI
| ISSUED: December 19, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR
ISILIO ARRIAGA

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING MOTION TO INTERVENE AND REQUEST TO STAY
PROCEEDING, DENYING REQUEST FOR VOLUNTARY CANCELLATION, AND
INVOLUNTARILY CANCELLING IXC REGISTRATION

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. Case Background

On June 2, 2005, a representative of Radiant Telecom, Inc. (Radiant) contacted our staff to request Regulatory Assessment Fee (RAF) return forms for 2004 and 2005 as it expected to request cancellation of its intrastate interexchange telecommunications company (IXC) registration. On June 27, 2005, we received the company's 2004 and 2005 RAF returns, with payment. The company reported \$0 in revenues for each year.

On August 2, 2005, we received Radiant's letter requesting a voluntary cancellation of IXC Registration No. TJ230. Radiant had been a significant nationwide provider in the prepaid calling services (PPCS) market, and our staff was concerned that the company may still be providing PPCS in Florida. For this reason, our staff delayed processing voluntary cancellation of the company's IXC registration pending further investigation.

On August 17, 2005, Dickstein, Shapiro, Morin & Oshinsky, LLP, representing APCC Services, Inc. (APCC Services), an organization that represents pay telephone companies, filed a Motion to Intervene and Stay the Proceeding (Motion) in this Docket. APCC Services claims that Radiant owes its members for unpaid dial-around compensation, and that a cancellation of

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the company's certificate will impair the ability of APCC's members to collect the monies owed them.

On August 18, 2005, our staff sent Radiant a letter via certified mail requesting its response by September 9, 2005, to the following:

1. An explanation for the apparent discrepancy between the revenues reported for 2004 and 2005 (\$0) and the existence of complaints from Florida consumers (indicating purchases of Radiant products were made during that period);
2. A clarification of Radiant's use of the phrase that "Radiant is winding down," since that would imply that the company was currently operating and providing telecommunications services in Florida;
3. A response to a complaint filed by G. L. Danmeier on May 23, 2005, Complaint No. 653277T, for which no response had been received to date; and
4. An explanation of Radiant's relationship with three other telecommunications companies with the same address as Radiant.

To date, we have not received a response either to the August 18, 2005, letter or to Mr. Danmeier's May 23, 2005, complaint. Additionally, Radiant settled a previous apparent failure-to-respond violation in Docket No. 001329-TI.

We have jurisdiction over these matters pursuant to Sections 364.02, 364.285 and 364.336, Florida Statutes.

II. Analysis

A. APCC Services' Motion

In its Motion, APCC Services asks this Commission to stay Radiant's request to voluntarily cancel its IXC registration. In support of its Motion, APCC Services asserts that its interests will be substantially and adversely affected if we grant Radiant's request to voluntarily cancel its IXC registration in the State of Florida. APCC Services further asserts that by allowing Radiant to "exit the market," Radiant will be able to effectively abandon its liabilities for unpaid dial-around compensation.¹ APCC Services also requests that we stay Radiant's request for voluntary cancellation until its complaint with the FCC is fully adjudicated. Furthermore, APCC Services asserts standing on the basis that the public, namely payphone service providers (PSPs), would be adversely affected by allowing Radiant to exit the market

¹ On August 2, 2005, APCC Services filed a formal complaint with the Federal Communications Commission (FCC) against Radiant, and other affiliated entities, for unpaid dial-around compensation, and other violations of the FCC's payphone compensation rules, pursuant to Section 208 of the Communications Act of 1934, as amended, and Section 1.721 of the FCC Rules.

because some independent PSPs substantially rely on the payment of dial-around compensation as part of their revenue.

1) Standard for Intervention

Rule 25-22.039, Florida Administrative Code, states in pertinent part:

“[p]ersons...who have a substantial interest in the proceeding...must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding.”

2) Two-Prong Substantial Interests Test

In order to demonstrate standing, an individual “must show 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect.” Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The first prong of the test involves the degree of the injury, and the second prong involves the nature of the injury. Id. The “injury in fact” must be both real and immediate and not speculative or conjectural. International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So.2d 1224, 1225-26 (Fla. 3rd DCA 1990). See also, Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation, 506 So.2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So.2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

a. Injury-in-Fact

APCC Services asserts that it has a substantial economic interest in the outcome of our decision in this Docket. However, economic injury alone is insufficient to afford standing. Agrico at 482. The complaint attached to APCC Services’ Motion is still pending before the FCC; therefore, the FCC has yet to render a decision on when and how much monies Radiant owes to APCC Services, and others similarly situated. The uncertainty of the pending complaint, among other factors, renders APCC Services’ assertions of economic injury in the instant Docket speculative. We note that the possibility exists that an injury may never occur.² If APCC Services does not receive the monies owed to it by Radiant, this will not be a result of

² See Order No. PSC-00-0757-PCO-SU, Docket 991812-SU, In re: Application for transfer of Certificate No. 492-S in Franklin County from Resort Village Utility, Inc. to SGI Utility, LLC, where this Commission found that a customer’s protest did not meet the substantial interests test on the basis that “[n]one of ... the alleged injuries have or are occurring and these alleged injuries may never occur. Therefore, we find that these alleged injuries are speculative ...”

either a voluntary or involuntary cancellation of Radiant's IXC registration.³ Consequently, APCC Services' claim of an economic injury is too remote to meet the first prong of the substantial interests test as set forth in Agrico. Intervenor must "demonstrate through their allegations that they [have] sustained either actual injury-in-fact [at the time of filing their petition] or that they [are] in danger of sustaining some direct injury as a result of the agency's action." Village Park Mobile Home Association, Inc., at 433. We note that the effective date of the cancellation of Radiant's IXC registration will be December 31, 2005. That being said, we find that APCC Services fails to fulfill the immediacy component of the injury-in-fact part of the test.

b. Zone of Interest

As stated above, meeting the second prong of the test hinges on whether the injury is of the type the proceeding is designed to protect. Rule 25-24.474, Florida Administrative Code, codifies this Commission's authority to cancel a company's certificate on its own motion for violation of Commission rules or orders, or for violation of the Florida Statutes. The Rule is clear, and the intent of the Rule appears to be to protect the interests of the general public, not the economic interests of competitors. In Florida Society of Ophthalmology v. State of Florida Board of Optometry, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988), the court found that the "affect [on] the economic affairs of the appellants are legally insufficient because the alleged economic injury does not fall within the zone of interest intended to be protected by the applicable statutes." Based on the apparent intent of Rule 25-24.474, Florida Administrative Code, whether APCC Services' suffers economic injury has no correlation to our assessment of Radiant's ability to provide the citizens of Florida with sufficient and adequate telecommunications service, nor is APCC Services' economic injury the type of injury to which protection is afforded by the Rule. Therefore, we find that APCC Services also fails to meet the second prong of the Agrico test on the basis that Rule 25-24.474, Florida Administrative Code, is not designed to protect the economic interests of an intervenor.

3) Conclusion

Based on the foregoing analysis, we hereby deny APCC Services' Motion to Intervene and Request to Stay Proceeding. We find that APCC Services has not demonstrated a substantial injury sufficient to satisfy the Agrico two-prong test. First, APCC Services' potential economic injury is too remote, and second, Rule 25-24.474, Florida Administrative Code, authorizing this Commission to involuntarily cancel an IXC registration of a company that violates Commission rules or orders or the Florida Statutes, is not designed to protect the economic interests of an intervenor.

³ We note that although this Docket was established initially on the basis of Radiant's request for voluntary cancellation of its IXC registration, we are denying Radiant's request and instead involuntarily canceling Radiant's IXC registration on our own motion.

B. Radiant's Request for Voluntary Cancellation

1) Cancellation of a Certificate

Rule 25-24.474(2), Florida Administrative Code, states that if a registered company desires to cancel its registration, it shall request cancellation from this Commission in writing and shall provide the current and any past due RAFs, and the associated penalty and interest with its request, as well as a statement on treatment of customer deposits and final bills, if applicable. Radiant paid its current and past due RAFs, with associated penalty and interest, and requested cancellation in writing as required by this rule. However, it did not provide a statement on its treatment of customer deposits and final bills.

In addition, Rule 25-24.474(1)(b), Florida Administrative Code, states that violation of a Commission rule or order shall be grounds for cancellation of a company's registration. After receiving the company's request for cancellation, our staff performed a routine assessment of the status of the company's compliance with Commission rules and resolution of consumer complaints. When our staff found that Radiant had an outstanding complaint for which no response had been provided, and compared the company's reported revenues for 2004 and 2005 (\$0 per year) with those reported in previous years (e.g., \$294,757.00 in 2002), an inquiry was sent to the company via certified mail.

2) Customer Complaints

Radiant has not responded to our staff's inquiries or to the outstanding customer complaint. Rule 25-22.032(6)(b), Florida Administrative Code, requires that the company provide this Commission with a written response to complaints within 15 working days after the complaint is sent to the company. Radiant's response to Complaint No. 653277T was due on June 14, 2005. Since it appears that Radiant is no longer in business, there would be no purpose in requiring the company to pay a penalty. By canceling the company's registration on our own motion, however, we would be able to track the company should it apply for another certificate or IXC registration in the future. The cancellation of Radiant's IXC registration in no way diminishes the its obligation to settle the issue of its apparent violation of Rule 25-22.032(6)(b), Florida Administrative Code.

In conclusion, we find that Radiant's apparent violation of Rule 25-22.032(6)(b), Florida Administrative Code, and its failure to respond to our staff's inquiries concerning its 2004 and 2005 RAF returns are grounds for an involuntary cancellation of Radiant's intrastate interexchange telecommunications company Registration No. TJ230.

III. Conclusion

Upon review and consideration, we hereby deny APCC Services, Inc.'s Motion to Intervene and Stay the Proceeding on the basis that it lacks standing to intervene in an involuntary cancellation of an IXC registration. Furthermore, we hereby deny Radiant Telecom, Inc.'s request for a voluntary cancellation, and instead on our own motion, involuntarily cancel IXC Registration No. TJ230, with an effective date of December 31, 2005.

This Order shall 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 this Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute shall be deemed stipulated. If Radiant Telecom, Inc. fails 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 Radiant Telecom, Inc. is removed from the register and its tariff canceled effective December 31, 2005, in accordance with this Order, Radiant Telecom, Inc. shall be required to cease and desist providing intrastate interexchange telecommunications services in Florida on that date. If Radiant Telecom, Inc. should subsequently reapply for IXC registration or any other telecommunications certificate, such application shall not be approved until it has settled its apparent violation of Rule 25-22.032(6)(b), Florida Administrative Code. This Docket shall be closed administratively upon the issuance of the Consummating Order.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that we hereby deny APCC Services, Inc.'s Motion to Intervene and Request to Stay Proceeding. It is further

ORDERED that we hereby deny Radiant Telecom, Inc.'s request for a voluntary cancellation and on our own motion, involuntarily cancel IXC Registration No. TJ230, with an effective date of December 31, 2005. It is further

ORDERED that this Order shall 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 this Order. It is further

ORDERED that as provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute shall be deemed stipulated. If Radiant Telecom, Inc. fails 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. It is further

ORDERED that if Radiant Telecom, Inc. is removed from the register and its tariff canceled effective December 31, 2005, in accordance with this Order, Radiant Telecom, Inc. shall be required to cease and desist providing intrastate interexchange telecommunications services in Florida on that date. It is further


ORDERED that if Radiant Telecom, Inc. should subsequently reapply for IXC registration or any other telecommunications certificate, such application shall not be approved until Radiant Telecom, Inc. has settled the issue of its apparent violation of Rule 25-22.032(6)(b), Florida Administrative Code. It is further

ORDERED that this Docket shall be closed administratively upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 19th day of December, 2005.

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

By:



Kay Flynn, Chief
Bureau of Records

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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 January 9, 2006.

ORDER NO. PSC-05-1238-PAA-TI
DOCKET NO. 050526-TI
PAGE 8

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.