

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of PATS Certificate No. 7989, issued to Protocall Communications, Inc., for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.	DOCKET NO. 090241-TC ORDER NO. PSC-09-0836-FOF-TC ISSUED: December 21, 2009
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
NANCY ARGENZIANO  
NATHAN A. SKOP  
DAVID E. KLEMENT

FINAL ORDER DISMISSING PROTEST AND  
REINSTATING PROPOSED AGENCY ACTION

BY THE COMMISSION:

**I. Case Background**

Section 364.336, Florida Statutes, requires pay telephone service providers to pay a minimum annual Regulatory Assessment Fee if the certificate was active during any portion of a calendar year. Rule 25-4.0161(2), Florida Administrative Code, provides that the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Section 350.113(4), Florida Statutes, requires the Commission to mail the Regulatory Assessment Fee return form to entities at least 45 days prior to the date that payment of the fee is due.

Rule 25-4.0161(9), Florida Administrative Code, requires the Commission to send a delinquent notice to any company that fails to file a Regulatory Assessment Fee return and that fails to pay the fee by the specified due date. Rule 25-4.0161(10), Florida Administrative Code, requires Commission staff to establish dockets for companies failing to pay the Regulatory Assessment Fee within 15 days after receiving the delinquent notice and administratively issue a proposed agency action order imposing penalties, requiring payment of the delinquent Regulatory Assessment Fees or cancelling certificates. Rule 25-4.0161(11), Florida Administrative Code, establishes that automatic penalties shall be \$500 for a first offense, \$1,000 for a second offense, and \$2,000 for a third offense.

On December 15, 2008, the 2008 Regulatory Assessment Fee return forms were mailed to telecommunication companies. Payment had to be postmarked by January 30, 2009, to avoid statutory late payment charges.

DOCUMENT NUMBER-DATE

12130 DEC 21 09

FPSC-COMMISSION CLERK

On February 19, 2009, an e-mail was sent to Protocall Communications, Inc. (Protocall) stating that the 2008 RAF had not been paid, a delinquent notice would be sent the next day, and that the company would be automatically fined if the company did not comply with the notice. The e-mail system was unable to deliver the message.

On February 20, 2009, a delinquent notice was sent to Protocall via certified mail for nonpayment of the 2008 RAF.

On February 26, 2009, the delinquent notice was received and signed for by "S. Walker"<sup>1</sup> according to the certified receipt provided by the US Postal Service. This meant that payment of the RAF, including late payment charges, had to be postmarked by March 13, 2009, to avoid an automatic \$500 penalty.

On March 27, 2009, Protocall postmarked its 2008 minimum RAF payment and 2008 RAF return form.

On March 31, 2009, our Fiscal Services mailed a letter to Protocall which stated that based on the postmark date of the company's RAF payment, an additional amount of \$12 for statutory late payment charges was due.

On April 22, 2009, our Fiscal Services mailed a Second Notice letter to Protocall for the RAF late payment charges.

On April 27, 2009, Docket No. 090241-TC was established for violation of Rule 25-4.0161, Florida Administrative Code.

On May 6, 2009, Protocall postmarked its \$12 payment for late charges based on its minimum RAF payment.

On May 15, 2009, Order No. PSC-09-0336-PAA-TC was issued, which imposed an automatic \$500 penalty, including collection costs. According to the Order, 12 companies had until close of business June 6, 2009, to pay any past due amount of the RAF, including late payment charges, and the automatic \$500 penalty, or protest the Order.

On June 1, 2009, the PAA Order was received and signed for by "S. Walker" according to the certified receipt provided by the US Postal Service.

On June 2, 2009, Mr. Jett, the company president, called and questioned the \$500 penalty. He was informed that the RAF was paid, but too late to avoid the automatic penalty. A new e-mail address was given to us.

---

<sup>1</sup> The signature on the receipt for the delinquent notice appears to be S. Walker as does the signature for receipt of the PAA Order.

On June 4, 2009, Protocall timely filed a protest to the proposed agency action order. Mr. Jett, the company's president, stated personal and economic reasons for waiving the penalty and wrote, "We have been certified [sic] since 1987 and have never been late before."<sup>2</sup>

On August 5, 2009, Mr. Jett was called and e-mailed in an attempt to resolve the docket.

On September 15, 2009, Mr. Jett was emailed and informed that attempts to call him had been futile and requested that he us. He was also informed that a recommendation would be drafted for the Commission.

On October 15, 2009, Mr. Jett was sent a certified letter at both his P.O. Box and the physical address he has on file with the Commission. The letters requested that Mr. Jett contact us within seven days regarding whether he intended to pursue his protest or take any further action in the present docket.

On October 16 and 22, 2009, the US Postal Service left notices of attempted delivery of the certified letters.

On October 23, 2009, Protocall was called and a message was left that certified letters had been sent and we were requesting a return call.

On October 29, 2009, the certified letters were delivered and the return receipts signed by Mr. Jett who did not respond in the requested time frame. As of the date of the filing of the recommendation, there had been no response from Protocall.

This order addresses Protocall's protest of the automatic \$500 penalty for late payment of the 2008 RAF. We are vested with jurisdiction in this matter pursuant to Sections 350.113, 364.285, and 364.336, Florida Statutes.

## **II. Analysis**

As detailed in the Case Background, upon issuance of PAA Order No. PSC-09-0336-PAA-TC, Protocall Communications, Inc. filed a response, protesting the penalties imposed. As a result, our staff made several attempts to contact Protocall, all of which were unsuccessful. Attempts to contact the company were made via phone, e-mail, and certified letter.

We have afforded Protocall ample time and opportunity to pursue its case. Protocall's protest was filed on June 4, 2009, and from this date on, our staff was engaged in attempting to make contact. For more than three months, following the filing of its protest, Protocall has failed to respond to repeated inquiries.

---

<sup>2</sup> Mr. Jett previously held a payphone certificate under the name Pro Telecom, Inc. (07/14/87-12/31/02). Statutory late payment charges were paid by Pro Telecom, Inc. for 1996, 2000, 2001, and 2002 RAFs. Statutory late payment charges were paid by Protocall for 2001, 2002, and 2005 RAFs.

Because Protocall has failed to take any action regarding its protest, to contact this Commission, and to respond to repeated inquiries, we find Protocall's failure to act constitutes abandonment of its protest in this docket.

**III. Decision**

Because Protocall has failed to take any action subsequent to filing its protest and to respond to our repeated inquiries, we dismiss Protocall's protest with prejudice. Additionally, we reinstate PAA Order No. PSC-09-0336-PAA-TI for Docket No. 090241-TC and it shall be consummated as a Final Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Protocall Communications, Inc.'s protest of PAA Order No. PSC-09-0336-PAA-TC is dismissed with prejudice. It is further

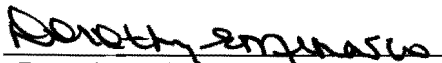
ORDERED that PAA Order No. PSC-09-0336-PAA-TC is reinstated and is consummated as a Final Order. It is further

ORDERED that payment of the \$500 penalty should be postmarked within 14 days of the issuance of this Final Order. The docket shall be closed administratively upon the timely receipt of the penalty or upon cancellation of Protocall Communications, Inc.'s PATS certificate

By ORDER of the Florida Public Service Commission this 21st day of December, 2009.

ANN COLE  
Commission Clerk

By:

  
Dorothy E. Menasco  
Chief Deputy Commission Clerk

(SEAL)

JLM

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.