



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

**DATE:** NOVEMBER 19, 1998

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF COMMUNICATIONS (ISLER) *PJC*  
DIVISION OF LEGAL SERVICES (BEDELL) *CB MCB*

**RE:** DOCKET NO. 981230-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 3271 ISSUED TO PAY PHONE DISTRIBUTORS, INC. FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES, AND 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES

**AGENDA:** 12/01/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\981230.RCM

### CASE BACKGROUND

Pay Phone Distributors, Inc. obtained Certificate Number 3271 on February 12, 1993. On December 11, 1997, the Division of Administration sent the 1997 regulatory assessment fee (RAF) notice by certified mail. The United States Postal Service (USPS) returned the receipt which showed the notice was signed for and delivered on December 13, 1997. The Division of Administration notified staff by memorandum that this company did not pay its 1997 RAFs, plus statutory penalties and interest for the years 1993, 1994, 1995, and 1997. As of November 9, 1998, this company has not paid the past due amount.

Staff wrote this company on four separate occasions, two of which were certified letters, about service evaluations performed on its pay telephones. The company did not respond to staff's

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letters. Staff called the company on October 19, 1998, and talked with the owner who stated that he did not want his certificate canceled, would pay the past due charges, and respond to staff's letters. As of November 9, the company has not responded.

Staff believes the following recommendations are appropriate.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission impose a \$500 fine or cancel Pay Phone Distributors, Inc.'s pay telephone certificate number 3271 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

**RECOMMENDATION:** Yes. The Commission should impose a \$500 fine or cancel Pay Phone Distributors, Inc.'s certificate if the fine and the regulatory assessment fees, including statutory penalties and interest, are not received by the Commission within five business days after the conclusion of the 21-day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and regulatory assessment fees, including statutory penalties and interest, are not received, the pay telephone certificate number should be canceled. (Isler)

**STAFF ANALYSIS:** Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Staff was notified by the Division of Administration that this company had not paid its 1997 regulatory assessment fees, plus statutory penalties and interest charges for the years 1993, 1994, 1995, and 1997. Therefore, the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

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Accordingly, staff recommends that the Commission assess a \$500 fine for failure to comply with the Commission rules or cancel the company's certificate number 3271 if the fine and the regulatory assessment fees, along with statutory penalties and interest, are not paid within five business days after the conclusion of the 21-day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and regulatory assessment fees, including statutory penalties and interest, the certificate should be canceled.

**ISSUE 2:** Should the Commission impose a \$10,000 fine or cancel Pay Phone Distributors, Inc.'s pay telephone certificate number 3271 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

**RECOMMENDATION:** Yes. The Commission should impose a \$10,000 fine or cancel the company's certificate number 3271 if the company does not respond to staff's request for information as required by Rule 25-4.043, F.A.C. and the fine is not received by the Commission within five business days after the conclusion of the 21-day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the required response and fine are not received, pay telephone certificate number 3271 should be canceled. (Isler)

**STAFF ANALYSIS:** Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.514, Florida Administrative Code, establishes the requirements for cancellation of a pay telephone company certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Rule 25-4.043, Florida Administrative Code, states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

On February 23, 1998, staff wrote the company about violations found during routine service evaluations at two pay telephones in the Fort Myers Beach area. A response was requested by March 10, 1998. When a response was not received, staff wrote the company a certified letter on March 20, 1998, and requested a response within 15 days. The USPS returned the receipt which showed the certified letter was signed for and delivered on April 15, 1998.

Staff evaluated four pay telephones owned and operated by this company. The two payphones mentioned above were re-evaluated and two more pay telephones were evaluated. Staff wrote the company on May 11, 1998 and requested a response by May 26, 1998. When a response was not received, staff wrote a certified letter on June

2, 1998, requesting a response within 15 days. The USPS returned the receipt which showed the certified letter was signed for and delivered on June 5, 1998.

On October 19, 1998, Mr. Carl Priebe, the owner of Pay Phone Distributors, Inc., called and stated he had received notice that this docket had been opened and asked what he needed to do. Staff explained that he would first need to pay all outstanding charges and respond to staff's letters. In addition, Mr. Priebe indicated that he was willing to make a settlement offer. As of November 12, Mr. Priebe has not done any of the things he stated he would do.

Accordingly, staff recommends that the Commission assess a \$10,000 fine for failure to comply with the Commission rules or cancel the company's certificate if the fine and response to staff inquiries as required by Rule 25-4.043, Florida Administrative Code, are not received by the Commission within five business days after the conclusion of the 21-day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the required information and fine are not received, the certificate should be canceled.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes, if no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final. Upon payment of the fines and fees, or cancellation of the certificate, this docket should be closed. (Bedell)

**STAFF ANALYSIS:** Whether staff's recommendation on Issue 1 is approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon payment of the fines and fees, or upon cancellation of the certificate.