

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida  
Public Service Commission of Pay  
Telephone Certificate No. 4338  
issued to Douglas Hermesch d/b/a  
Budget Communications for  
violation of Rule 25-4.0161,  
F.A.C., Regulatory Assessment  
Fees; Telecommunications  
Companies.

DOCKET NO. 981512-TC  
ORDER NO. PSC-99-0222-FOF-TC  
ISSUED: February 9, 1999

The following Commissioners participated in the disposition of  
this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION  
ORDER IMPOSING FINE AND REQUIRING PAYMENT OF REGULATORY  
ASSESSMENT FEES, OR CANCELING PAY TELEPHONE CERTIFICATE

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.

Douglas Hermesch d/b/a Budget Communications (Budget  
Communications) obtained Certificate No. 4338 on November 23, 1995.  
Budget Communications has not paid the regulatory assessment fees  
required by Section 364.336, Florida Statutes, and Rule 25-4.0161,  
Florida Administrative Code, for the year 1997, along with  
statutory penalties and interest charges. Under Section 364.336,  
Florida Statutes, certificate holders must pay a minimum annual  
regulatory assessment fee of \$50 if the certificate was active

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FPSC-RECORDS/REPORTING

during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. All entities that apply for certification receive a copy of our rules governing pay telephone service and an affidavit in which the applicants attest that the rules have been received and understood by the applicant. This affidavit must be attached to the application in order for the application to be processed.

Pursuant to Section 350.113(4), Florida Statutes, the regulatory assessment fee forms, for the period of January 1, through December 31, are mailed to the entities at least 45 days prior to the date that payment of the fee is due. Budget Communications has been given adequate opportunity to pay. The Commission's correspondence regarding the regulatory assessment fees was sent by certified mail. The United States Postal Service attempted delivery on December 15, 1997 and December 27, 1997. Budget Communications did not claim the certified mail. It was returned, stamped "unclaimed". To date, Budget Communications has not paid the required fees.

This is the second time the Commission has opened a docket against Budget Communications for nonpayment of the regulatory fees. The first time was Docket No. 961117-TC, in which Budget Communications did not pay its 1995 regulatory assessment fee until immediately prior to the Commissioner's agenda. Therefore, the docket was closed administratively.

In previous cases, we have imposed a \$500 fine for failure to pay regulatory assessment fees. However, since this is the second docket to be opened for the same rule violation, the Commission believes a \$1000 fine is appropriate.

For the reason described above, pursuant to Rule 25-24.514(1)(b) and (c), Florida Administrative Code, we find it appropriate to cancel Budget Communications's certificate for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, unless Budget Communications pays a \$1000 fine and remits all past due regulatory assessment fees, along with statutory penalties and interest charges, to the Florida Public Service Commission. Budget Communications must comply with these requirements within five business days from the date this Order becomes final. The fine will be remitted to the Comptroller for deposit in the State of

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Florida General Revenue Fund, pursuant to Section 364.516, Florida Statutes.

When the appropriate fees, statutory penalties, interest charges, and fine are received, this Docket shall be closed. Should Budget Communications fail to comply with this Order within five business days from the date this Order becomes final, Budget Communications shall have its certificate canceled, and the Docket shall be closed. The cancellation of the certificate and the closing of the Docket in no way diminishes Budget Communications's obligation to pay applicable delinquent regulatory assessment fees, statutory penalties, and interest charges.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Douglas Hermesch d/b/a Budget Communications must pay the past due regulatory assessment fees, statutory penalties, interest charges, and a \$1000 fine to the Florida Public Service Commission for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, within five business days from the date this Order becomes final. The fine will be transmitted to the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that should Douglas Hermesch d/b/a Budget Communications fail to comply with this Order, Douglas Hermesch d/b/a Budget Communications' Certificate No. 4338 shall be canceled, and the Docket shall be closed. It is further

ORDERED that the cancellation of the certificate and the closing of the docket in no way diminishes Douglas Hermesch d/b/a Budget Communications' obligation to pay applicable delinquent regulatory assessment fees, statutory penalties, and interest charges. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

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ORDERED that in the event this Order becomes final, this Docket shall be closed upon payment of the fine, and fees, or upon cancellation of the certificate.

By ORDER of the Florida Public Service Commission this 9th day of February, 1999.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

JAM

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.

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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 2, 1999.



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In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date 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.