

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

DATE: MARCH 18, 1999

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

FROM: DIVISION OF TELECOMMUNICATIONS (ISLER) *Dir*
DIVISION OF LEGAL SERVICES (MCKINNEY) *JCM MCB*

RE: DOCKET NO. 981190-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PATS CERTIFICATE NO. 2602 ISSUED TO CHARLES KAYE D/B/A US PHONELINE FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 03/30/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981190.RCM

CASE BACKGROUND

US Phonenumber obtained Florida Public Service Commission Pay Telephone Certificate No. 2602 on December 5, 1990.

The Division of Administration mailed the 1997 regulatory assessment fee (RAF) notice by certified mail. Staff received the return receipt from the United States Postal Service (USPS) which showed that the RAF notice was signed for and delivered on December 15, 1997.

The Division of Administration advised staff by memorandum that this company had not paid its 1997 RAF, plus the 1991, 1994, 1995, 1996, and 1997 statutory penalty and interest charges.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Staff filed its memorandum on November 19, 1998, which recommended a \$500 fine or cancellation of the company's certificate for nonpayment of the 1997 regulatory assessment fees. On November 25, 1998, prior to the December 1, 1998 Agenda Conference, Mr. Charles Kaye, Owner, called staff and stated that he would do what was necessary to resolve this issue. Therefore, staff requested that this item be deferred from the December 1, 1998 Agenda Conference.

Staff has talked with Mr. Kaye on three different occasions since the deferral. On each occasion, Mr. Kaye advised staff that he would pay the outstanding charges and make a settlement offer. As of March 11, 1999, the company has not paid the past due charges or proposed a settlement agreement.

In addition, staff discovered that this is the second docket opened for this rule violation. The first was Docket No. 920431-TC. On September 24, 1992, Order No. PSC-92-1064-FOF-TC was issued, which ordered the company to show cause in writing by October 14, 1992, why a fine should not be imposed or the certificate canceled. On October 28, 1992, the company paid the \$100 fine. On February 25, 1993, Order No. PSC-93-0299-FOF-TC was issued, which reinstated the certificate and closed the docket. Therefore, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$1,000 fine or cancel the company's certificate for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$1,000 fine or cancel the company's certificate if the fine and the regulatory assessment fees, including statutory penalty and interest charges, 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 penalty and interest charges,

are not received, PATS Certificate No. 2602 should be canceled with an effective date of December 31, 1998. (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 penalty and interest charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of Administration notified staff by memorandum that this company had not submitted the regulatory assessment fees for 1997, along with statutory penalty and interest charges for the years 1991, 1994, 1995, 1996, and 1997.

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Staff has talked with Mr. Kaye on three different occasions since the deferral. On each occasion, Mr. Kaye advised staff that he would pay the outstanding charges and make a settlement offer. As of March 11, 1999, the company has not paid the past due charges or proposed a settlement agreement.

In addition, staff discovered that this is the second docket opened for this rule violation. The first was Docket No. 920431-TC. On September 24, 1992, Order No. PSC-92-1064-FOF-TC was issued, which ordered the company to show cause in writing by October 14, 1992, why a fine should not be imposed or the certificate canceled. On October 28, 1992, the company paid the \$100 fine. On February 25, 1993, Order No. PSC-93-0299-FOF-TC was issued, which reinstated the certificate and closed the docket.

Accordingly, since this is the second docket opened for the same rule violation, and because the company has not followed through in the proposed settlement, staff recommends that the Commission assess a \$1,000 fine for failure to comply with the Commission rules or cancel the company's certificate if the fine and the regulatory assessment fees, along with statutory penalty and interest charges, 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

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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 penalty and interest charges, are not received, the company's certificate should be canceled with an effective date of December 31, 1998.

ISSUE 2: 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 fine and fees, or cancellation of the certificate, this docket should be closed. (McKinney)

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 fine and fees, or upon cancellation of the certificate.