



Public Service Commission

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DATE: FEBRUARY 22, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *Pik*
DIVISION OF LEGAL SERVICES (BANKS) *FEB*

RE: DOCKET NO. 000917-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 3238 ISSUED TO FIRST TELE COMMUNICATIONS SERVICES, INC. FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES, AND 25-24.520, F.A.C., REPORTING REQUIREMENTS.

AGENDA: 03/06/01 - REGULAR AGENDA - FINAL ACTION

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\000917.RCM

CASE BACKGROUND

- **12/24/92** - This company was granted Florida Public Service Commission Certificate No. 3238.
- **03/25/99** - The company mailed its check for the 1998 Regulatory Assessment Fee (RAF), including penalty and interest charges. The company reported no revenues for the period ended December 31, 1998.
- **04/23/99** - The company's check was returned by its bank for insufficient funds.
- **05/18/99** - The Division of Administration wrote the company and advised that its check had been returned and to repay the past due amount, along with the returned check charge.

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FPSC-RECORDS/REPORTING

- **12/08/99** - The 1999 RAF Notice was mailed. Payment was due January 31, 2000.
- **02/29/00** - The Division of Administration mailed the Delinquent Notice.
- **03/29/00** - The U.S. Postal Service (USPS) returned mail addressed to the company stamped "forwarding time expired."
- **09/25/00** - Order No. PSC-00-1721-PAA-TC was issued, which imposed a \$1,000 fine for nonpayment of the 1998 and 1999 RAFs, including statutory penalty and interest charges for the years 1992, 1994, 1995, 1996, 1998, and 1999 and for not providing the Commission with its updated address and telephone number or cancelled the company's certificate. The company had until October 16, 2000 to protest the Order.
- **10/17/00** - Mr. Bahram Yousefizadeh, President, called staff and explained that he has been very ill and wanted to keep his certificate active. He provided the Commission with his new address and telephone number.
- **10/18/00** - Staff faxed the company a letter outlining its options.
- **10/19/00** - Mr. Yousefizadeh called staff and advised that he would send a check for the past due amount and write a letter.
- **10/20/00** - The Commission received the company's payment for the 1998 and 1999 RAFs, including all except \$10.00 of the penalty and interest charges. In addition, Mr. Yousefizadeh wrote a letter to the Commission responding to the Order. The company reported no revenues for the period ended December 31, 1999.
- **12/08/00** - The 2000 RAF notice was mailed. Payment was due by January 30, 2001.
- **12/19/00** - The USPS returned the 2000 RAF notice stamped "attempted, not known." The 2000 RAF notice was mailed to the company's new address it had provided staff on October 17, 2000.

- **02/13/00** - As of this date, the company has not paid the past due penalty and interest balance or the 2000 RAF, including penalty and interest, or contacted staff further.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.3375, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should Order No. PSC-00-1721-PAA-TC be rendered a Final Order and Docket No. 000917-TC closed?

RECOMMENDATION: Yes. The company has not submitted a Response to the Commission's Proposed Agency Action Order in compliance with Rule 28-106.201, Florida Administrative Code. Therefore, Order No. PSC-00-1721-PAA-TC should be rendered a Final Order. As stated in the Proposed Agency Action Order, if the company fails to pay in full the outstanding charges within five business days of the issuance of the Order from this recommendation, First Tele Communications Services, Inc.'s Certificate No. 3238 should be cancelled effective October 16, 2000 and in accordance with Order No. PSC-00-1721-PAA-TC. Whether or not First Tele Communications Services, Inc. pays the outstanding charges, this docket should be closed upon expiration of the five business days as no further action by the Commission is required. If First Tele Communications Services, Inc. fails to pay the outstanding charges, the unpaid amount should be forwarded to the Office of the Comptroller for further collection efforts. (Isler; Banks)

STAFF ANALYSIS: By Order No. PSC-00-1721-PAA-TC, issued September 25, 2000, the company was required to respond to the Order by October 16, 2000. On October 20, 2000, the Commission received a response from the company.

Prior to the written response, on October 17, Mr. Bahram Yousefizadeh, President, called staff and advised that he would pay the outstanding balance and write the Commission. On October 18, staff wrote Mr. Yousefizadeh and explained that to keep his certificate active, his only option at this point was to pay the

outstanding charges plus the \$1,000 fine. On October 20, Mr. Yousefizadeh responded in writing to the Proposed Agency Action Order by stating that due to the extenuating circumstances concerning the health problems he has experienced and hospitalization, he needed a few days to put together his explanation of what had transpired. Mr. Yousefizadeh included the 1998 and 1999 RAFs, along with all except \$10.00 of the past due statutory penalty and interest charges for prior years.

Since the October 20 letter and payment, Mr. Yousefizadeh has not recontacted staff, paid the balance of the penalty and interest charges, or paid the \$15.00 returned check charge. First Tele Communications Services, Inc. also has a history of late payments. In addition, Mr. Yousefizadeh's original response was received after the end of the protest period. Staff emphasizes that First Tele Communications Services, Inc. did not file a timely response to the Commission's Proposed Agency Action Order as required by Rule 28-106.201, Florida Administrative Code, and did not request a hearing. Instead, the company simply advised that it needed additional time to respond.

In addition, under Section 364.336, Florida Statutes, certificate holders are responsible for RAFs if the certificate was active during any portion of the calendar year. A RAF return notice for the year 2000 was mailed to the company to the new address provided to the Commission in October. Although the 2000 RAF notice was returned by the USPS, Rule 25-4.0161 (7)(d), Florida Administrative Code, states in pertinent part, "The failure of a telecommunications company to receive a return form shall not excuse the company from its obligation to timely remit the regulatory assessment fees."

Therefore, staff recommends that Order No. PSC-00-1721-PAA-TC should be rendered a Final Order. As stated in the Proposed Agency Action Order, if the company fails to pay in full the outstanding charges within five business days of the issuance of the Order from this recommendation, First Tele Communications Services, Inc.'s Certificate No. 3238 should be cancelled effective October 16, 2000 and in accordance with Order No. PSC-00-1721-PAA-TC. Whether or not First Tele Communications Services, Inc. pays the outstanding charges, this docket should be closed upon expiration of the five business days as no further action by the Commission is required. If First Tele Communications Services, Inc. fails to pay the outstanding charges, the unpaid amount should be forwarded to the Office of the Comptroller for further collection efforts.