



Public Service Commission

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DATE: JULY 26, 2001

TO: DIRECTOR, DIVISION OF COMMISSION CLERK AND ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF REGULATORY OVERSIGHT (T. MCCOY) *B for M P*
DIVISION OF LEGAL SERVICES (K. PEÑA, B. KEATING) *JK*

RE: DOCKET NO. 001802-TC - APPLICATION FOR CERTIFICATE TO PROVIDE PAY TELEPHONE SERVICE BY LAND FOR SALE.COM, INC.

AGENDA: 08/07/01 - REGULAR AGENDA - ISSUE 2 PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\001802.RCM

CASE BACKGROUND

On December 18, 2000, Mark Singer (Mr. Singer), filed an application as a corporation in the name Land For Sale.Com, Inc. to provide Pay Telephone Services (PATS) in Florida. Mr. Singer is the President of Land for Sale.Com, Inc. As part of the application review process, Staff checks all company officers' names against the FINE Database which is maintained by the Division of Competitive Services, Bureau of Service Quality, for a name match. Mr. Singer's name was identified as being associated with Tescom International Communications, Inc. (Tescom) which has a previous PATS involuntary cancellation history with the Commission. Therefore, Staff considers it appropriate to bring this matter to the attention of the Commission.

Further, Staff found that there were questions in Land For Sale.Com, Inc.'s PATS application that were answered incorrectly, based on Staff's investigation.

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Question 13 of the PATS application states:

"Has the applicant or subsidiary, partner, officer, director, or any stockholder ever been granted or denied a pay telephone certificate in the State of Florida? (This includes active and canceled pay telephone certificates.) If yes, provide explanation and list the certificate holder and certificate number."

Question 14 of the PATS application states:

"Is the applicant or any subsidiary, partner, officer, director, or any stockholder a subsidiary, partner, or officer in any other Florida certificated pay telephone company? If yes, give name of company and relationship. If no longer associated with company, give reason why not."

And Question 15(4) of the PATS application states:

"Has had regulatory penalties imposed for violations of telecommunications statutes, rules, or orders. Explain circumstances."

Mr. Singer answered these questions with a "No." Staff's investigation revealed, however, that Mr. Singer had previously applied for, and been granted PATS Certificate No. 5894, in Docket No. 991298-TC for Tescom. Staff contacted Mr. Singer to inquire about his involvement with the company, and he stated that Tescom had not pursued the Pay Telephone business and through oversight, neglected to contact the Commission to request cancellation of Certificate No. 5894. Therefore, PATS Certificate No. 5894 continued to accrue delinquent Regulatory Assessment Fees (RAFs), statutory penalties and interest charges for the years 1998, 1999, and 2000.

Commission records show that on September 2, 1999, Staff established Docket 991298-TC to cancel Tescom's certificate for violations of Rule 25-24.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, and Rule 25-24.520, F.A.C., Reporting Requirements. By Order PSC-99-2411-PAA-TC, issued December 8, 1999, the Commission imposed a \$1000 fine on Tescom. Failure to comply or respond to the Order would have resulted in

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the cancellation of Tescom's certificate. Tescom failed to respond to the Commission's Order, and Pay Telephone Certificate No. 5894 was canceled.

Subsequent to the conversations with Staff, regarding his involvement with the previously canceled PATS certificate, on June 18, 2001, the Commission received from Mr. Singer the revised PATS Application pages, a check in payment for the past due RAFs, along with accrued statutory penalties and interest, and a check for \$500 as a settlement offer to the Commission in response to the fine imposed in Order No. PSC-99-2411-PAA-TC against Tescom.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.285, 364.335 and 364.3375, Florida Statutes.

In consideration of these facts, Staff believes that the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer submitted by Land For Sale.Com, Inc.?

RECOMMENDATION: Yes. The Commission should accept the proposed settlement offer of Land For Sale.Com, Inc. The \$500 offered should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285, Florida Statutes.

STAFF ANALYSIS: Staff believes that the company's settlement offer is fair and reasonable, and adequately addresses Staff's concerns. Staff notes that Tescom and Land For Sale.Com, Inc. are two separate corporations, and according to Rule 25-24.511(5), F.A.C., Application for Certificate:

"Only one certificate per applicant will be granted. A new certificate will not be granted to any applicant who has previously had a certificate involuntarily cancelled."

Land For Sale.Com, Inc. is a new applicant and a new corporation; however, both corporations share two of the same original officers, Mark Singer, President, and Darren McKee, Vice President. Staff believes that it was not the Commission's original intent to allow officers of an involuntarily canceled company to start another corporation and reapply in order to avoid paying past due RAFs, statutory penalties and interest or fines imposed on a Commission canceled certificate. However, Mr. Singer has complied with Staff's request for a corrected Pay Telephone Application and has paid Tescom's outstanding RAFs, statutory penalties and interest, and a settlement of \$500 toward the fine imposed by Order No. PSC-99-2411-PAA-TC to demonstrate good faith to the Commission and his intent to comply in the future with Commission Rules and Orders. Staff also does not believe that Mr. Singer's actions were an intentional effort to avoid payment of RAFs. Staff emphasizes that Order No. PSC-99-24-11-PAA-TC has become final, certificate No. 5894 has been cancelled, and Docket No. 991202-TC has been closed. Staff is not recommending that the \$500 offered by Mr. Singer be accepted to resolve the issues in Docket No. 991202-TC, but is, instead, recommending that the payment be accepted as a demonstration of Mr. Singer's good faith assurances to comply with

Commission rules and orders in the future which would serve to alleviate concerns regarding his latest application for a new certificate. Therefore, Staff believes that the Commission should accept Land For Sale.Com, Inc.'s settlement offer.

ISSUE 2: Should the Commission grant Land For Sale.Com, Inc. a certificate to provide statewide Pay Telephone service in Florida?

RECOMMENDATION: Yes. Staff believes that Land For Sale.Com, Inc. should be granted a Florida Public Service Commission **Certificate No. 7883** to operate as a Pay Telephone Services Provider in the State of Florida.

If the Commission denies Issue 1, the application for a certificate should also be denied. (McCoy)

STAFF ANALYSIS: Even though the Commission canceled Tescom's certificate in 2000, due to its failure to notify the Commission of its dissolution and its failure to respond to Order PSC-99-2411-PAA-TC, Staff accepts the company's representation that these were oversights which will not happen again. Mr. Singer now understands that the Commission should be informed of company dissolutions, and RAFs are to be paid on a timely basis. On June 18, 2001, the Commission received a check for the past due RAFs for Tescom, along with accrued statutory penalties and interest, and a check for \$500 as a good faith settlement gesture to the Commission in response to the fine imposed in Order No. PSC-99-2411-PAA-TC. Therefore, staff recommends that the Commission grant Land For Sale.Com, Inc. a certificate to provide Pay Telephone services.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee of \$50 if the certificate is active during any portion of the calendar year. A Regulatory Assessment Fee Return notice will be mailed each December to Land For Sale.Com, Inc. for payment in January.

If, however, in Issue 1, the Commission rejects Mr. Singer's offer as an insufficient demonstration of his intent to comply with Commission rules and orders on a going-forward basis, then staff believes the application for a certificate for Land For Sale.Com, Inc. should also be rejected.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, if no person whose substantial interests are affected by the Commission's decision in Issue 2 files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a Consummating Order. (Peña/Keating)

STAFF ANALYSIS: If no timely protest to the proposed agency action in Issue 2 is filed within 21 days of the date of issuance of the order, this docket should be closed upon the issuance of the Consummating Order.