



Public Service Commission
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COMMISSION CLERK

DATE: DECEMBER 5, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Aji*
OFFICE OF THE GENERAL COUNSEL (ELLIOTT) *JAE*

RE: DOCKET NO. 020805-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PATS CERTIFICATE NO. 7390 ISSUED TO TYRONE JOSEPH CLINTON D/B/A CLINTON ENTERPRISES 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: 12/17/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020805.RCM

CASE BACKGROUND

- 05/10/00 - This company obtained Florida Public Service Commission Pay Telephone Certificate No. 7390.
- 03/23/01 - The Commission received the company's payment for the 2000 Regulatory Assessment Fee (RAF), including statutory penalty and interest charges. The company reported no revenues for the period ended December 31, 2000.
- 12/12/01 - The Division of the Commission Clerk & Administrative Services mailed the 2001 Regulatory Assessment Fee (RAF) notice. The due date was January 30, 2002.

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- **02/21/02** - The Office of the General Counsel mailed a delinquent notice via certified mail. The US Postal Service subsequently returned the receipt, which showed the delinquent notice was signed for and delivered to the company.
- **05/09/02** - The Division of the Commission Clerk & Administrative Services notified staff that mail addressed to this company had been returned by the US Postal Service (USPS). The USPS provided a different mailing address.
- **06/06/02** - Staff wrote the company at the new address provided by the USPS and explained that the 2001 RAF, plus penalty and interest charges, had not been paid. Staff advised that a docket would be established if payment was not received by June 27, 2002.
- **07/19/02** - Staff called the telephone number listed in the Master Commission Directory. The person answering the phone stated that staff had the wrong number. Staff confirmed the telephone number with the called party. Staff then called Directory Assistance, but was told there was no listing.
- **07/24/02** - Having received no response from the company, staff opened this docket to address the nonpayment of RAF and the reporting requirements violation.
- **07/31/02** - The Division of Consumer Affairs had received a letter from this company dated July 9, 2002, requesting cancellation of its certificate. Staff was not aware of the letter until after the docket had been established. There was no telephone number listed on the company's letter.
- **08/02/02** - Staff wrote the company another letter and included the 2001 and 2002 RAF return forms and a copy of Rule 25-24.514, Florida Administrative Code, which explains how to request cancellation of a pay telephone certificate. Staff requested a response by August 23, 2002.
- **11/27/02** - As of this date, the 2001 RAF, including statutory penalty and interest charges, remain unpaid. In addition, there are no outstanding consumer complaints against this company.

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The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.337, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

ISSUE 1: Should the Commission grant Tyrone Joseph Clinton d/b/a Clinton Enterprises a voluntary cancellation of its certificate?

RECOMMENDATION: No. The Commission should not grant the company a voluntary cancellation of its certificate. The Commission should cancel the company's certificate on its own motion with an effective date of July 17, 2002. The collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. If the certificate for Tyrone Joseph Clinton d/b/a Clinton Enterprises is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing pay telephone services in Florida. (Isler; Elliott)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, incorporated by Rule 25-24.505, 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. Rule 25-24.520(1)(a) and (b), Florida Administrative Code, provides that telecommunications companies must notify the Commission within 10 days of a change in its address, telephone number, and liaison. It has been longer than 10 days, and the Commission has not been notified of the company's updated reporting requirements.

Rule 25-24.514(2)(a), and (b), Florida Administrative Code, states:

- (2) If a certificated company desires to cancel its certificate, it shall request cancellation from the Commission in writing and shall provide the following with its request.
 - (a) Statement of intent and date to pay Regulatory Assessment Fee.
 - (b) Statement of why the certificate is proposed to be cancelled.

On July 17, 2002, the Commission received a letter dated July 9, 2002, from Tyrone Joseph Clinton d/b/a Clinton Enterprises, which requested cancellation of its certificate because it was no longer in the pay telephone business. Staff wrote the company and explained that it needed to comply with Rule 25-24.514(2)(a), Florida Administrative Code. As of November 27, 2002, the company

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has not paid the 2001 RAF, including statutory penalty and interest charges, nor either paid the 2002 RAF or stated when the 2002 RAF would be paid. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the obligation to pay Regulatory Assessment Fees, including statutory penalty and interest charges, if the certificate was active during any portion of the calendar year, including the year of cancellation.

Accordingly, staff believes the Commission should not grant the company a voluntary cancellation of its certificate. The Commission should cancel the company's certificate on its own motion with an effective date of July 17, 2002. The collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. If the certificate for Tyrone Joseph Clinton d/b/a Clinton Enterprises is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing pay telephone services in Florida.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. The docket should then be closed upon receipt of the penalty and fees and updated reporting requirements, or cancellation of the certificate. (Elliott)

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 receipt of the penalty and fees and updated reporting requirements, or cancellation of the certificate.