

State of Florida



**Public Service Commission**  
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COMMISSION  
CLERK

**DATE:** DECEMBER 23, 2003

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

**FROM:** DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji*  
OFFICE OF THE GENERAL COUNSEL (CHRISTENSEN) *PAK* *PIC* *MS*

**RE:** DOCKET NO. 030619-TX - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF CLEC CERTIFICATE NO. 5742 ISSUED TO THE MOBILE PHONE COMPANY, INC. FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

**AGENDA:** 01/06/04 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\030619.RCM

**CASE BACKGROUND**

- **12/05/98** - This company obtained Florida Public Service Commission Competitive Local Exchange Telecommunications Company (CLEC) Certificate No. 5742.
- **01/30/02** - The Commission received the company's Regulatory Assessment Fee (RAF) return for the period ended December 31, 2001. The company reported revenues in the amount of \$26,559.
- **12/12/02** - The Division of the Commission Clerk & Administrative Services mailed the 2002 RAF return. Payment was due January 30, 2003.
- **02/21/03** - The Office of the General Counsel mailed a delinquent notice. The US Postal Service returned the

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certified receipt, which showed the delinquent notice was signed for by Orlando Rodriguez and delivered on February 24, 2003.

- **03/19/03** - The Division of the Commission Clerk & Administrative Services notified staff that this company had not paid the 2002 RAF.
- **04/11/03** - Staff wrote the company at the address on file in the Master Commission Directory and explained that payment for the RAF needed to be paid by April 30, 2003, to avoid an enforcement docket from being established.
- **06/23/03** - Staff called the telephone number on file for the company and left a voice mail message. The fax number had been disconnected.
- **07/03/03** - Staff wrote the company a letter attempting collection of the 2002 RAF prior to establishing a docket.
- **07/15/03** - Docket No. 030619-TX was established for nonpayment of the 2002 RAF, including statutory late payment charges, and the balance of the 2001 RAF.
- **08/25/03** - The Division of Consumer Affairs advised staff that The Mobile Phone Company, Inc. had one complaint that required additional information before it could be closed out.
- **09/04/03** - Mr. Edwin Altamirano, President, left a voice mail message, which advised that he wanted to resolve this docket. Staff returned the call and left a voice mail message.
- **10/06/03** - Staff faxed the company a note explaining what needed to be done to resolve this docket and included the 2002 RAF return form.
- **11/17/03** - Staff wrote the company a final time advising what needed to be done to resolve this docket.
- **12/09/03** - As of this date, the company has not paid the past due amount or provided the additional information on the one pending customer complaint.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, 364.285, and 364.337, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission cancel The Mobile Phone Company, Inc.'s CLEC Certificate No. 5742 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code?

**RECOMMENDATION:** The Commission should cancel The Mobile Phone Company, Inc.'s CLEC Certificate No. 5742 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, with an effective date of December 31, 2003. If the past due fee, including statutory late payment charges, is not received within fourteen (14) calendar days after the issuance of the Consummating Order, the amount shall be turned over to the Florida Department of Financial Services for further collection efforts. If the Commission's Order is not protested, the company's CLEC Certificate No. 5742 should be cancelled administratively. If The Mobile Phone Company, Inc.'s certificate is cancelled in accordance with the Commission's Order from this recommendation, The Mobile Phone Company, Inc. should be required to immediately cease and desist providing competitive local exchange services in Florida. **(Isler; Christensen)**

**STAFF ANALYSIS:** The Mobile Phone Company, Inc. has not paid its 2002 RAF, plus statutory late payment charges, and has a history of late payments. The company's certificate became effective December 5, 1998, and in four out of five years, the company paid the RAF after the due date. The one year (2001) that payment was postmarked timely, the company did not pay the full amount of the minimum payment. In addition, two other dockets were established for nonpayment of the RAFs.

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Docket No. 992001-TX was established on December 22, 1999, for nonpayment of the 1998 RAF. On April 28, 2000, Order No. PSC-00-0845-PAA-TX was issued, which imposed a \$500 penalty or cancelled the company's certificate. The company subsequently paid the past due RAF and proposed a \$100 settlement. On June 13, 2000, Order No. PSC-00-2037-AS-TX was issued, which accepted the company's settlement offer. The company subsequently paid the settlement and the docket was closed.

Docket No. 011146-TX was established on August 23, 2001, for nonpayment of the 2000 RAF. The company paid the past due RAF and proposed a \$500 settlement. On December 10, 2001, Order No. PSC-01-2382-AS-TX was issued, which accepted the company's settlement offer. In its settlement offer, the company proposed to pay future RAFs in a timely manner. The company subsequently paid the settlement and the docket was closed.

Since this is the third docket established for nonpayment of the RAFs, the company should be well aware when the fees are due each year. The cancellation of a certificate for a third offense is consistent with a prior Commission decision. In Docket No. 000968-TC, by Order No. PSC-00-1815-PAA-TC, issued October 4, 2000, the Commission cancelled James M. Bracewell d/b/a Southern Telecommunications' pay telephone certificate for violating the RAF rule in three separate dockets (Nos. 971340-TC, 981273-TC, and 000968-TC). Based on the above, staff believes that cancellation of this company's certificate is appropriate.

Therefore, it appears The Mobile Phone Company, Inc. has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, and is not in compliance with its previous settlement proposal. 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 late payment charges, if the certificate was active during any portion of the calendar year, including the year of cancellation.

Accordingly, staff recommends that the Commission cancel The Mobile Phone Company, Inc.'s CLEC Certificate No. 5742 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, with

an effective date of December 31, 2003. If the past due fee, including statutory late payment charges, is not received within fourteen (14) calendar days after the issuance of the Consummating Order, the amount shall be turned over to the Florida Department of Financial Services for further collection efforts. If the Commission's Order is not protested, the company's CLEC Certificate No. 5742 should be cancelled administratively. If The Mobile Phone Company, Inc.'s certificate is cancelled in accordance with the Commission's Order from this recommendation, The Mobile Phone Company, Inc. should be required to immediately cease and desist providing competitive local exchange 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 issuance of the Proposed Agency Action Order. The docket should then be closed upon issuance of a Consummating Order. **(Christensen)**

**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 issuance of a Consummating Order.