

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION  
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**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** February 17, 2005

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Competitive Markets & Enforcement (Isler) *Aje*  
Office of the General Counsel (Scott) *KS* *lee* *mm*

**RE:** Docket No. 040852-TX – Compliance investigation of David A. Chesson and Ted J. Moss d/b/a Phone-Out/Phone-On for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies.

**AGENDA:** 03/01/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\040852.RCM.DOC

### Discussion of Issues

**Issue 1:** Should the Commission deny David A. Chesson and Ted J. Moss d/b/a Phone-Out/Phone-On a voluntary cancellation of its competitive local exchange telecommunications company certificate and cancel the certificate on the Commission's own motion with an effective date of December 31, 2004?

**Recommendation:** Yes. (Isler, Scott)

**Staff Analysis:** See attached proposed Order.

DOCUMENT NUMBER-DATE

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**Issue 2:** Should this docket be closed?

**Recommendation:** Staff recommends that the Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If the company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If the company fails to pay the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the company's certificate should be cancelled administratively and the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. If the company's certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing competitive local exchange telecommunications services in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the company's certificate. (Scott)

**Staff Analysis:** Staff recommends that the Commission take action as set forth in the foregoing staff recommendation statement.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of David A. Chesson and Ted J. Moss d/b/a Phone-Out/Phone-On for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 040852-TX  
ORDER NO.  
ISSUED:

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON  
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION ORDER  
CANCELLING COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS  
COMPANY CERTIFICATE INVOLUNTARILY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Pursuant to Section 364.336, Florida Statutes, competitive local exchange telecommunications companies must pay a minimum annual Regulatory Assessment Fee of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due. All entities that apply for certification receive a copy of our rules governing competitive local exchange telecommunications service.

David A. Chesson and Ted J. Moss d/b/a Phone-Out/Phone-On currently holds Certificate No. 7466, issued by this Commission on June 30, 2000, authorizing the provision of Competitive Local Exchange Telecommunications service. The Division of the Commission Clerk & Administrative Services advised our staff that David A. Chesson and Ted J. Moss d/b/a Phone-Out/Phone-On had not paid the Regulatory Assessment Fee required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the year 2003. Also,

accrued statutory late payment charges required by Section 350.113(4), Florida Statutes, for the years 2002 and 2003 had not been paid. The entity was scheduled to remit its 2003 Regulatory Assessment Fee by January 30, 2004. In addition, on May 7, 2004, our staff wrote the company and advised that payment of the 2003 Regulatory Assessment Fee should be paid by May 28, 2004, to avoid a docket from being established. On October 11, 2004, the Commission received a letter from Mr. David A. Chesson, which advised that he believed he had surrendered the company's certificate in December 2003 and stated that it has not had any customers since December 2003. Mr. Chesson requested cancellation of the company's certificate. On October 21, 2004, staff wrote Mr. Chesson and explained that the past due Regulatory Assessment Fees had to be paid before a voluntary cancellation of the company's certificate could be granted. A response was requested by November 5, 2004. On December 22, 2004, the Commission received the company's 2004 Regulatory Assessment Fee return, which showed zero revenues for the year 2004 and a note written on the form that stated "out of business December 2003." As of January 27, 2005, the company has not paid the past due Regulatory Assessment Fee for 2003 or 2004, including statutory late payment charges, or complied with Rule 25-24.820, Florida Administrative Code, Revocation of a Certificate. Rule 25-24.820, Florida Administrative Code, also provides for this Commission to cancel a certificate on its own motion for violation of Commission Rules, Florida Statutes, or Orders.

Since David A. Chesson and Ted J. Moss d/b/a Phone-Out/Phone-On is no longer in business, there would be no purpose in requiring it to pay a penalty, which is consistent with prior Commission decisions. By involuntarily cancelling David A. Chesson and Ted J. Moss d/b/a Phone-Out/Phone-On's certificate, however, we would be able to track this company should it apply for another certificate with us in the future. The collection of the past due Regulatory Assessment Fee, including statutory late payment charges, shall be referred to the Florida Department of Financial Services for further collection efforts, and the docket shall be closed. The cancellation of the certificate in no way diminishes the entity's obligation to pay applicable delinquent Regulatory Assessment Fees and accrued statutory late payment charges. If the entity's certificate is cancelled in accordance with this Order, it shall immediately cease and desist providing competitive local exchange telecommunications services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 350.113, 364.336, 364.337, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that David A. Chesson and Ted J. Moss d/b/a Phone-Out/Phone-On shall pay the past due Regulatory Assessment Fees, including statutory late payment charges, to the Florida Public Service Commission as required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, within 14 days after the date of issuance of the Consummating Order. It is further

ORDERED that pursuant to Rule 25-24.820(1)(b), Florida Administrative Code, should David A. Chesson and Ted J. Moss d/b/a Phone-Out/Phone-On fail to comply with this Order, Certificate No. 7466 shall be cancelled, effective December 31, 2004; the collection of the past due fees shall be referred to the Florida Department of Financial Services for further collection efforts; and the docket shall be closed. It is further

ORDERED that the cancellation of the certificate in no way diminishes David A. Chesson and Ted J. Moss d/b/a Phone-Out/Phone-On's obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory late payment charges. It is further

ORDERED that if David A. Chesson and Ted J. Moss d/b/a Phone-Out/Phone-On's certificate is cancelled in accordance with this Order, David A. Chesson and Ted J. Moss d/b/a Phone-Out/Phone-On shall immediately cease and desist providing Competitive Local Exchange Telecommunications services in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed upon receipt of the Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the certificate.

By ORDER of the Florida Public Service Commission this \_\_\_\_ day of \_\_\_\_\_

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BLANCA S. BAYO, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

KS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on \_\_\_\_\_.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.