

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:** May 4, 2006

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

**FROM:** Division of Competitive Markets & Enforcement (Isler) *Pji*  
Office of the General Counsel (McKay) *VSM* *AW* *MS*

**RE:** Docket No. 060268-TC – Request for cancellation of PATS Certificate No. 8542 by Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises, effective March 3, 2006.

**AGENDA:** 05/16/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\060268.RCM.DOC

### Discussion of Issues

**Issue 1:** Should the Commission deny Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises a voluntary cancellation of its pay telephone company (PATS) Certificate No. 8542 and cancel the certificate on the Commission's own motion with an effective date of March 3, 2006?

**Recommendation:** Yes, the company should be denied a voluntary cancellation as listed on Attachment A. (Isler, McKay)

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

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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 pays the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's pay telephone certificate will be voluntary. If the company fails to pay the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the company's pay telephone certificate should be cancelled administratively, and the collection of the past due Regulatory Assessment Fees should be referred to the Florida Department of Financial Services for further collection efforts. If the company's pay telephone certificate 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 service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fees or upon cancellation of the company's pay telephone certificate. (McKay)

**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: Request for cancellation of PATS  
Certificate No. 8542 by Mark A Lain &  
Kathryn L Lain d/b/a MKL Enterprises,  
effective March 3, 2006.

DOCKET NO. 060268-TC  
ORDER NO.  
ISSUED:

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO R. ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION ORDER  
CANCELLING PAY TELEPHONE COMPANY CERTIFICATE ON THE COMMISSION'S  
OWN MOTION

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.

Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises currently holds Certificate No. 8542, issued by this Commission on December 13, 2004, authorizing the provision of pay telephone service (PATS). Pursuant to Section 364.336, Florida Statutes, pay telephone 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. In addition, Rule 25-24.514, Florida Administrative Code, provides that a payphone company requesting cancellation of its certificate must state its intent and date to pay the current Regulatory Assessment Fee. All entities that apply for certification receive a copy of our rules governing pay telephone service.

Annually, the Division of the Commission Clerk and Administrative Services mails out a request for updated reporting requirements form. On March 14, 2006, our staff received a copy of the form with a handwritten note advising that Mark A Lain & Kathryn L Lain d/b/a MKL

Enterprises was no longer operating as a pay telephone company in Florida. This Commission's records also show that on March 3, 2006, the company's 2005 Regulatory Assessment Fee was received, along with a letter requesting cancellation of its certificate. Our staff wrote the company on March 22, 2006, and advised the company to either pay the 2006 Regulatory Assessment Fee or provide a date certain it would be paid. A response was requested by April 7, 2006. As of April 25, 2006, the company has not responded.

For the reasons described above, we deny Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises' request for voluntary cancellation of its PATS certificate. However, we find it appropriate to involuntarily cancel the pay telephone certificate, effective March 3, 2006, on this Commission's own motion for failure to comply with Rule 25-24.514, Florida Administrative Code, and pursuant to Section 364.336, Florida Statutes.

Since it appears Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises does not provide service in Florida and has requested cancellation of its certificate, there would be no purpose in requiring the company to pay a penalty. The cancellation of the PATS certificate, in no way diminishes the entity's obligation to pay the applicable Regulatory Assessment Fee. If this Order is not protested, the company's PATS Certificate No. 8542 shall be cancelled, effective March 3, 2006, and the collection of the past due fees shall be referred to the Florida Department of Financial Services for further collection efforts. If the company pays the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's pay telephone certificate will be voluntary. If the company fails to pay the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the company's pay telephone certificate should be cancelled administratively, and the collection of the past due Regulatory Assessment Fees should be referred to the Florida Department of Financial Services for further collection efforts. If the company's pay telephone certificate 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 service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fees or upon cancellation of the company's pay telephone certificate. If Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises' PATS certificate is cancelled on this Commission's own motion and subsequently decides to reapply for a certificate as a pay telephone company, Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises shall be required to first pay any outstanding penalties and cost of collection and fees, including accrued statutory late payment charges. We are vested with jurisdiction over these matters pursuant to Sections 350.113, 364.336, 364.3375, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED that pursuant to Rule 25-24.514, Florida Administrative Code, Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises' PATS Certificate No. 8542 is hereby cancelled effective March 3, 2006, on this Commission's own motion for failure to pay the past due Regulatory Assessment Fee, pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the cancellation of the certificate in no way diminishes Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises's obligation to pay the applicable Regulatory Assessment Fees. If the company's PATS certificate is cancelled and the company subsequently decides to reapply for a certificate as a pay telephone company, that company shall be required to first pay any outstanding penalties and cost of collection and fees, including accrued statutory late payment charges. It is further

ORDERED that if Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises pays the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, the cancellation of the certificate shall be deemed voluntary. It is further

ORDERED that if Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises does not pay the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, the collection of the Regulatory Assessment Fees shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises's certificate is cancelled in accordance with this Order, Mark A Lain & Kathryn L Lain d/b/a MKL Enterprises shall immediately cease and desist providing pay telephone service 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 Fee, or upon cancellation of the PATS certificate.

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

\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

(SEAL)

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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.