

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for cancellation of PATS Certificate No. 8471 by Pinnacle Payphone Corporation, effective March 3, 2010. | DOCKET NO. 100118-TC  
ORDER NO. PSC-10-0341-PAA-TC  
ISSUED: June 2, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman  
LISA POLAK EDGAR  
NATHAN A. SKOP  
DAVID E. KLEMENT  
BEN A. "STEVE" STEVENS III

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.

**I. Case Background**

Pinnacle Payphone Corporation (Pinnacle) currently holds Certificate No. 8471, issued by this Commission on June 4, 2004, authorizing the provision of pay telephone service (PATS). Pursuant to Section 364.336, Florida Statutes (F.S.), each telecommunications company holding an active certificate for any portion of the calendar year must pay a minimum annual Regulatory Assessment Fee. Pursuant to Section 350.113(4), F.S., 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. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to this Commission by January 30 of the subsequent year. In addition, Rule 25-24.514, Florida Administrative Code, provides that a pay telephone company requesting cancellation of its certificate must state its intent and date to pay the current Regulatory Assessment Fee (RAF).

In December 2009, Pinnacle was mailed its annual RAF return form. In February 2010, a certified notice was mailed notifying Pinnacle that they were delinquent in paying the 2009 RAF.

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On February 25, 2010, Mr. Mark Higgins, President of Pinnacle, signed the return receipt, acknowledging delivery of the delinquency notice. On March 3, 2010, Pinnacle mailed its 2009 RAF, as well as a correspondence requesting cancellation of its PATS certificate effective December 31, 2009. On March 12, 2010, our staff e-mailed Pinnacle and explained that the 2010 RAF was also due as were late payment charges for 2009 and that the effective date for cancellation would be March 3, 2010 and not December 31, 2009. A copy of the 2010 RAF return form was also e-mailed to the company. On March 15, 2010, Mr. Mark Higgins e-mailed staff that he did not believe he owed 2009 late payment charges or the RAF for 2010. On March 18, 2010, our staff responded, explaining that Section 364.336, F.S., requires payment if your certificate was active for any portion of the calendar year and that a minimum fee was required pursuant to Sections 350.113 and 364.336, F.S. On March 18, 2010, Mr. Higgins replied that the required fee exceeded the maximum percentage of revenue allowed by statute. On March 31, 2010, our staff advised Mr. Higgins that the statutes not only have a maximum percentage of revenue for those companies having revenues that exceed the minimum but also a required minimum fee.

We are vested with jurisdiction over these matters pursuant to Sections 350.113, 364.285, 364.336 and 364.3375, F.S.

## II. Analysis

Section 364.336, F.S., states that:

Notwithstanding any provisions of law to the contrary, each telecommunications company licensed or operating under this chapter, for any part of the preceding 6-month period, shall pay to the commission, within 30 days following the end of each 6-month period, **a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business, except, for purposes of this and the fee specified in s. 350.113(3),***(emphasis added)* any amount paid to another telecommunications company for the use of any telecommunications network shall be deducted from the gross operating revenue for purposes of computing the fee due. **The commission shall by rule assess a minimum fee in an amount up to \$1,000.** *(emphasis added)* The minimum amount may vary depending on the type of service provided by the telecommunications company, and shall, to the extent practicable, be related to the cost of regulating such type of company. Differences, if any, between the amount paid in any 6-month period and the amount actually determined by the commission to be due shall, upon motion by the commission, be immediately paid or refunded. **Fees under this may not be less than \$50 annually.** *(emphasis added)* Such fees shall be deposited in accordance with s. 350.113. The commission may by rule establish criteria for payment of the regulatory assessment fee on an annual basis rather than on a semiannual basis.

Pursuant to Section 364.336, F.S., telecommunications companies may not be assessed a fee that exceeds 0.25 percent annually of its gross operating revenues derived from intrastate

business. Section 364.336, F.S. also sets forth a minimum fee that shall be assessed to telecommunications companies in an amount up to \$1,000 and not less than \$50. In his March 12, 2010 email, Mr. Higgins asserted that “although the statute goes on to say a minimum amount can be set by the Commission, there is no indication that the minimum amount can cause a company to have to pay more than .25% of Gross Operating Revenue. The only way to comply with the statutory requirement...and also impose a minimum of \$100 is to require no payment from companies with gross operating revenues less than \$40,000.” In an additional e-mail dated March 18, 2010, Mr. Higgins asserted that Section 364.336, F.S., is contradictory and should be interpreted in his favor. We disagree.

All parts of a statute must be read together in order to achieve a consistent whole. See, e.g., *Marshall v. Hollywood, Inc.*, 224 So. 2d 743, 749 (Fla. 4th DCA 1969), writ discharged, 236 So. 2d 114 (Fla.), cert. denied, 400 U.S. 964 (1970). [\*\*11] Where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another. E.g., *Villery v. Florida Parole & Probation Comm'n*, 396 So. 2d 1107, 1111 (Fla. 1980). Accordingly, Section 364.336, F.S. must be considered as a whole in order to effectuate the legislative intent. See, e.g., *Fleischman v. Department of Professional Regulation*, 441 So. 2d 1121, 1123 (Fla. 3d DCA 1983) (“Every statute must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts.”), review denied, 451 So. 2d 847 (Fla. 1984).

We find that read in its entirety, Section 364.336, F.S. is not “contradictory.” Section 364.336, F.S. mandates that this Commission shall by rule assess a minimum fee. The intent of Section 364.336, F.S. is to ensure that telecommunications companies with minimal revenues, pay a RAF that covers “the cost of regulating such type of company.” As the holder of a PATS certificate, Pinnacle is required to remit a fee of \$100.<sup>1</sup>

In e-mails dated March 18, 2010 and March 31, 2010, our staff attempted to assist Mr. Higgins’ with the appropriate interpretation of the statute. Staff explained to Mr. Higgins that Section 364.336, F.S. does not exclude pay telephone providers whose RAF (when calculated as a percentage of its gross operating revenues) falls below \$100. Additionally, our staff informed Mr. Higgins that Section 350.113, F.S. requires the Commission assess RAFs, Interest and Penalties and that Section 350.113, F.S. does not provide an exception based upon the amount of gross operating revenues generated by a company.

Our staff also notified Mr. Higgins that Pinnacle, on at least two occasions, had agreed to payment of this minimum fee. Pinnacle agreed to the minimum fee in an acknowledgment signed and attached to its PATS application, and also in failing to protest Order No. PSC-04-0484-PAA-TC issued May 11, 2004, in Docket No. 040186-TC, which granted Pinnacle’s certificate to provide pay telephone services.

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<sup>1</sup> Rule 25-4.0161(1)(b), Florida Administrative Code.

**III. Decision**

Accordingly, Pinnacle's request for voluntary cancellation of the company's PATS certificate shall be denied as Pinnacle owes the 2010 RAF, along with statutory late payment charges for 2005 and 2009. However, we find it appropriate to involuntarily cancel Pinnacle's certificate, effective March 3, 2010, on our own motion for failure to comply with Rule 25-24.514, Florida Administrative Code, and pursuant to Section 364.336, F.S.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that pursuant to Rule 25-24.514, Florida Administrative Code, Pinnacle Payphone Corporation's PATS Certificate No. 8471 is hereby cancelled effective March 3, 2010, on this Commission's own motion for failure to pay the 2010 Regulatory Assessment Fee, along with statutory late payment charges for 2005 and 2009, pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that if Pinnacle Payphone Corporation pays the Regulatory Assessment Fees, including accrued late payment charges, prior to the expiration of the Proposed Agency Action Order, the cancellation of the certificate shall be deemed voluntary. It is further

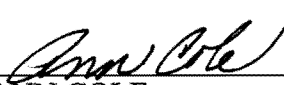
ORDERED that if Pinnacle Payphone Corporation does not pay the Regulatory Assessment Fees, including accrued late payment charges, prior to the expiration of the Proposed Agency Action Order, the collection of the Regulatory Assessment Fees shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if Pinnacle Payphone Corporation's certificate is cancelled in accordance with this Order, Pinnacle Payphone Corporation 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 Office of Commission Clerk, 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 administratively either upon receipt of payment of the Regulatory Assessment Fees, including any late payment charges, or upon cancellation of the company's pay telephone certificate.

By ORDER of the Florida Public Service Commission this 2nd day of June, 2010.

  
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ANN COLE  
Commission Clerk

( S E A L )

TJB

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 23, 2010.

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.