

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: August 26, 2004

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

FROM: Division of Competitive Markets & Enforcement (Isler)
Office of the General Counsel (Rockette-Gray)

RE: Docket No. 040406-TC – Compliance investigation of Ocean Palms Beach Club, Inc. for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Docket No. 040812-TC – Compliance investigation of Edward E. Rockey for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 09/07/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040406.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny the companies listed on Attachment A voluntary cancellation of their respective certificates and instead, on the Commission's own motion, cancel the companies respective certificates with prejudice?

Recommendation: Yes. (Isler; Rockette-Gray)

Staff Analysis: Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of Regulatory Assessment Fees by January 30 of the subsequent year for telecommunications companies, and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Date: August 26, 2004

Rule 25-24.514(2), Florida Administrative Code, Cancellation of a Certificate, provides that pay telephone companies must request cancellation from the Commission in writing and either pay the current year's Regulatory Assessment Fee or provide the date it will be paid.

On December 12, 2003, the Division of the Commission Clerk & Administrative Services mailed the 2003 Regulatory Assessment Fee return notice to the companies listed on Attachment A. Payment of the Regulatory Assessment Fee was due by January 30, 2004. The Commission received correspondence from each of the companies listed on Attachment A, which requested cancellation of their respective certificates. Staff wrote each of the companies listed on Attachment A and explained that staff could not recommend a voluntary cancellation until each company complied with the Regulatory Assessment Fee and Cancellation rules. As of August 17, 2004, none of the companies listed on Attachment A have fully complied with Rules 25-4.0161 and 25-24.514(2), Florida Administrative Code.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.285, 364.336, and 364.3375, Florida Statutes. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the company's 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 cancellation year. Therefore, staff recommends that the Commission deny the companies listed on Attachment A voluntary cancellation of their respective certificates and instead, on the Commission's own motion, cancel the companies respective certificates with prejudice.

Issue 2: Should these dockets 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 any company listed on Attachment A 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 any company listed on Attachment A fails to pay the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, each company's respective certificate, as listed on Attachment A, should be cancelled administratively and the collection of the past due fees should be referred to the Department of Financial Services for further collection efforts. If any company's certificate as listed on Attachment A is cancelled in accordance with the Commission's Order from this recommendation, the respective company should be required to immediately cease and desist providing pay telephone services in Florida. These dockets should be closed administratively upon either receipt of the payment of the Regulatory Assessment Fees, including statutory penalty and interest charges, or upon cancellation of a company's certificate as listed on Attachment A. A protest in one docket should not prevent the action in a separate docket from becoming final. **(Rockette-Gray)**

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

Docket Nos. 040406-TC, 040812-TC
Date: August 26, 2004

Attachment A

Docket No.	Provider RAF Information	Cert. No.	Effective Date of Cancellation	RAF/P&I Owed
040406-TC	Ocean Palms Beach Club, Inc.	8242	03/17/04	2002-P&I 2003-RAF 2003-P&I 2004-RAF
	\$19 Revenues for Period Ended 12/31/02			
040812-TC	Edward E. Rockey	5581	07/08/04	2002-P&I 2003-RAF 2003-P&I 2004-RAF
	\$2,500 Revenues for Period Ended 12/31/02			
	\$0 Revenues for Period Ended 12/31/03 (Company completed the RAF return but did not pay)			