

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: April 21, 2005

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

FROM: Division of Competitive Markets & Enforcement (Isler)
Office of the General Counsel (Rojas)

RE: Docket No. 041031-TC – Compliance investigation of Bay Public Communications, Inc. for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies.

AGENDA: 05/03/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\041031.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission deny Bay Public Communications, Inc.'s settlement proposal for a voluntary cancellation and instead cancel Payphone Certificate No. 7476 on the Commission's own motion with an effective date of December 31, 2004?

Recommendation: Yes. (Isler, Rojas)

Staff Analysis: See attached proposed Order.

Docket No. 041031-TC

Date: April 21, 2005

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that if the Commission approves staff's recommendation in Issue 1, this docket should be closed as no other issues need to be addressed by the Commission. (Rojas)

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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Bay Public Communications, Inc. for apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 041031-TC
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

ORDER CANCELLING PAY TELEPHONE COMPANY CERTIFICATE ON THE
COMMISSION'S OWN MOTION

BY THE COMMISSION:

Bay Public Communications, Inc. currently holds Pay Telephone Certificate No. 7476, issued by this Commission on July 5, 2000. The Division of the Commission Clerk & Administrative Services advised our staff that Bay Public Communications, Inc. 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 year 2003 had not been paid. Bay Public Communications, Inc. was scheduled to remit its 2003 Regulatory Assessment Fee by January 30, 2004. In addition, on May 26, 2004, our staff wrote the company and advised that payment of the 2003 Regulatory Assessment Fee should be paid by June 25, 2004, to avoid a docket from being established.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee (RAF) 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 a certificate receive a copy of our rules governing pay telephone service.

On December 23, 2004, Order No. PSC-04-1271-PAA-TC was issued, which imposed a \$500 penalty or in the alternative, cancelled the company's certificate. On January 13, 2005, the

Commission received a timely filed response to the Proposed Agency Action Order. The company included payment of the 2003 and 2004 Regulatory Assessment Fees, including the statutory late payment charges, and wrote a letter requesting voluntary cancellation. The company's check was later returned by its bank for insufficient funds. Staff attempted to contact the company via telephone and e-mail without success. As of April 14, 2005, the company continues to be in violation of our rules for nonpayment of the 2003 Regulatory Assessment Fee.

For the reasons described above, we deny Bay Public Communications, Inc.'s settlement proposal requesting voluntary cancellation of its payphone certificate. However, we find it appropriate to involuntarily cancel the certificate effective December 31, 2004, on the Commission's own motion for failure to pay the Regulatory Assessment Fee, pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code.

Since it appears Bay Public Communications, Inc. is no longer in business, there would be no purpose in requiring it to pay a penalty. By cancelling the company's certificate on the Commission's motion, however, we would be able to track the company should it apply for another certificate with us in the future. The cancellation of the certificate and the closing of the docket in no way diminishes the company's obligation to pay applicable delinquent fees, including statutory late payment charges. The collection of the past due fees shall be referred to the Florida Department of Financial Services for further collection efforts. Bay Public Communications, Inc.'s pay telephone certificate is cancelled in accordance with this Order and the company shall immediately cease and desist providing pay telephone services in Florida. We are vested with jurisdiction over this matter 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, Bay Public Communications, Inc.'s pay telephone certificate is hereby cancelled effective December 31, 2004, on the Commission's own motion for failure to pay the 2003 and 2004 Regulatory Assessment Fees, along with statutory late payment charges for the year 2003, pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the collection of the past due fees shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that the cancellation of the certificate in no way diminishes Bay Public Communications, Inc.'s obligation to pay applicable Regulatory Assessment Fees and accrued statutory late payment charges. It is further

ORDERED that Bay Public Communications, Inc. shall immediately cease and desist providing pay telephone service in Florida. It is further

ORDERED that this docket is closed.

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

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

(S E A L)

JPR

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas, or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.