

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: October 6, 2005

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

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

RE: Docket No. 050576-TC – Request for cancellation of PATS Certificate No. 8172 by Duane E Lund, effective August 25, 2005.

AGENDA: 10/18/05 – 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\050576.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission cancel Duane E Lund's Pay Telephone Certificate No. 8172 on its own motion with an effective date of August 25, 2005; notify the Division of the Commission Clerk & Administrative Services that any unpaid Regulatory Assessment Fees should not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amount?

Recommendation: Yes. (Isler; Scott)

Staff Analysis: See attached proposed Order.

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 any entity 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. The certificate should be cancelled administratively and the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, should not be referred to the Florida Department of Financial Services for further collection efforts. This docket should be closed administratively 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 FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for cancellation of PATS
Certificate No. 8172 by Duane E Lund,
effective August 25, 2005.

DOCKET NO. 050576-TC
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER CANCELLING PAY TELEPHONE
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.

On July 1, 2005, our staff wrote Mr. Duane E Lund and explained that this Commission had received its partial payment for the 2004 Regulatory Assessment Fee in the amount of \$11.86. Our staff explained that there is a \$50 minimum fee and that the balance needed to be paid. On July 26, 2005, this Commission received another partial payment in the same amount of \$11.86. On August 3, 2005, our staff wrote Mr. Lund again requesting the balance be paid. On August 22, 2005, our staff received a telephone call from Ms. Cathy Barrett, Legal Assistant to Kenneth M. Jones, Mr. Lund's attorney. Ms. Barrett advised that Mr. Lund had passed away on February 10, 2005, asked who had written the second check, and stated she would be requesting cancellation of his pay telephone certificate. This Commission received the letter requesting cancellation on August 25, 2005, which included a copy of Mr. Lund's death certificate, and a request that any unpaid Regulatory Assessment Fees be written-off.

Pursuant to Section 364.336, Florida Statutes, certificate holders 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 pay telephone service.

Rule 25-24.514(2)(a) and (b), Florida Administrative Code, provides that a company may request cancellation of its certificate from the Commission by either paying the current year's Regulatory Assessment Fee or providing a date certain that the Regulatory Assessment Fee will be paid, and include a statement of why the certificate is proposed to be cancelled. Although we cannot grant a voluntary cancellation of Mr. Lund's certificate, we will cancel the certificate on our own motion and request permission to write-off the balance of the 2004 Regulatory Assessment Fee and the 2005 Regulatory Assessment Fee. The cancellation of a certificate on the Commission's own motion due to the death of the certificate holder is consistent with a prior Commission decision. In Docket No. 030685-TC, by Order No. PSC-03-1171-PAA-TC, issued October 20, 2003, the Commission cancelled Hughes' Pay Telephones on its own motion and notified the Division of the Commission Clerk & Administrative Services that the past due Regulatory Assessment Fees, including statutory late payment charges, should not be sent to the Florida Department of Financial Services for collection, and instead, requested permission for the Commission to write-off the uncollectible amount. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.3375, Florida Statutes.

Accordingly, we shall cancel Payphone Certificate No. 8172 on this Commission's own motion, effective August 25, 2005. In addition, the Division of the Commission Clerk & Administrative Services shall be notified that the 2004 and 2005 Regulatory Assessment Fees, shall not be sent to the Florida Department of Financial Services for collection, but that permission for the Commission to write-off the uncollectible amount will be requested.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Duane E Lund's Pay Telephone Certificate No. 8172 to provide pay telephone services is hereby cancelled with an effective date of August 25, 2005. It is further

ORDERED that the outstanding Regulatory Assessment Fees shall not be sent to the Department of Financial Services for collection. The Division of the Commission Clerk and Administrative Services, instead, shall request for permission to write-off the uncollectible amount. 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 cancellation of the certificate.

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)

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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.