



Public Service Commission

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RECORDS AND REPORTING

DATE: APRIL 6, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAY)

FROM: DIVISION OF TELECOMMUNICATIONS (ISLER) *Pij*
DIVISION OF LEGAL SERVICES (K. PEÑA; B. KEATING) *rd*

RE: DOCKET NO. 992012-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE SERVICE CERTIFICATE NO. 5892 ISSUED TO PAYPHONE SERVICE COMPANY INC. FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES, 25-24.520, F.A.C., REPORTING REQUIREMENTS, AND 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES.

AGENDA: 04/18/00 - REGULAR AGENDA - ISSUES 1 AND 2 - PROPOSED AGENCY ACTION - ISSUE 3 - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\992012.RCM

CASE BACKGROUND

- 08/04/98 - The FPSC granted Payphone Service Company Inc. PATS Certificate No. 5892.
- 12/10/98 - The 1998 regulatory assessment fee (RAF) notice was mailed. Payment for the RAF was due by February 1, 1999.
- 12/21/98 - Staff performed a routine service evaluation on the payphone located at 17120 County Road 234, Micanopy, Payphone number (352) 466-9111.

DOCUMENT NUMBER-DATE

04241 APR-68

FPSC-RECORDS/REPORTING

- 12/31/98 - Staff mailed a letter to the company regarding the apparent violations at the Micanopy payphone and requested a written response by January 15, 1999.
- 01/27/99 - Staff mailed a certified letter to the company concerning the service evaluation performed on the Micanopy payphone. The United States Postal Service (USPS) returned the receipt, which showed the letter was signed for and delivered on February 1, 1999.
- 02/23/99 - Staff performed a routine service evaluation on the payphone located at 2810 Sharer Road, Tallahassee, payphone number (850) 553-4051.
- 02/26/99 - Staff mailed a letter to the company regarding the apparent violations at the Tallahassee payphone and requested a written response by March 15, 1999.
- 03/17/99 - Staff mailed a certified letter to the company concerning the service evaluation performed on the Tallahassee payphone. The USPS returned the receipt, which showed the letter was signed for and delivered on March 19, 1999.
- 07/29/99 - Staff mailed correspondence to all payphone companies concerning an increase in proposed fines for payphone service rule violations. The USPS returned the memo stamped "box closed; unable to forward."
- 08/11/99 - Staff attempted to contact the company to verify its mailing address. The telephone number listed for the company in the Master Commission Directory (MCD) had been disconnected. Staff then called Directory Assistance but was advised it had no listing for the company.
- 09/08/99 - The Division of Records and Reporting (RAR) notified staff that the USPS had returned mail for this company stamped "box closed; unable to forward."
- 11/16/99 - RAR notified staff that the USPS had returned mail for this company stamped "box closed; unable to forward."
- 12/08/99 - The 1999 RAF notice was mailed. Payment was due by January 31, 2000. The USPS returned the 1999 RAF notice stamped "box closed; unable to forward."
- 12/09/99 - RAR notified staff that the USPS had returned mail for this company stamped "box closed; unable to forward."

Staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$500 fine or cancel the pay telephone certificate issued to Payphone Service Company Inc. for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel Payphone Service Company Inc.'s certificate if the fine and the regulatory assessment fees, including statutory penalty and interest charges, are not received by the Commission within five business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and regulatory assessment fees, including statutory penalty and interest charges, are not received, Pay Telephone Certificate No. 5892 should be canceled administratively. (Isler)

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.514, Florida Administrative Code, establishes the requirements for cancellation of a pay telephone company certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalty and interest charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Staff was notified by the Division of Administration that Payphone Service Company Inc. had not paid its 1998 regulatory assessment fees, plus statutory penalty and interest charges. In addition, the company has not paid the 1999 RAF. Therefore, it appears the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies and has not requested cancellation of its certificate in compliance with Rule 25-24.514, Florida Administrative Code.

Accordingly, staff recommends that the Commission assess a \$500 fine or cancel Payphone Service Company Inc.'s certificate if the fine and the regulatory assessment fees, including statutory penalty and interest charges, are not received by the Commission within five business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public Service

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Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and regulatory assessment fees, including statutory penalty and interest charges, are not received, Pay Telephone Certificate No. 5892 should be canceled administratively.

ISSUE 2: Should the Commission impose a \$500 fine or cancel the pay telephone certificate issued to Payphone Service Company Inc. for apparent violation of Rule 25-24.520, F.A.C., Reporting Requirements?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel Payphone Service Company Inc.'s certificate if the information required by Rule 25-24.520, F.A.C., Reporting Requirements, and fine are not received by the Commission within five business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and required information are not received, Pay Telephone Certificate No. 5892 should be canceled administratively. (Isler)

STAFF ANALYSIS: Pursuant to Rule 25-24.520, F.A.C., Reporting Requirements, each company is allowed 10 days after a change occurs to file updated information indicating any changes in the certificate holder's address (including street name and address, post office box, city), telephone number and any change in the name and address of the individual who is serving as primary liaison with the Commission. Mail sent to the company was returned to the Commission by the USPS. In addition, the company's telephone number as listed in MCD has been disconnected and Directory Assistance has no listing for the company. It has been well over 10 days and staff has not been informed of the provider's correct mailing address, phone number, or liaison information.

Accordingly, staff recommends that the Commission assess a \$500 fine or cancel Payphone Service Company Inc.'s certificate if the information required by Rule 25-24.520, F.A.C., Reporting Requirements, and fine are not received by the Commission within five business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and required information are not received, Pay Telephone Certificate No. 5892 should be canceled administratively.

ISSUE 3: Should Payphone Service Company Inc. be ordered to show cause why a fine of \$10,000 for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries, should not be imposed or Certificate No. 5892 should not be canceled?

RECOMMENDATION: Yes. The Commission should order Payphone Service Company to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have Certificate No. 5892 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, F.A.C. The company's response should contain specific allegations of fact or law. If Payphone Service Company fails to respond to the show cause, and the fine is not paid within 10 business days after the 21 day show cause period, Certificate No. 5892 should be canceled. If the fine is paid, it should be remitted by the Commission to the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. (Isler)

STAFF ANALYSIS: Rule 25-24.505, F.A.C., Scope, incorporates Rule 25-4.043, F.A.C., which states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Staff performed routine service evaluations on two pay telephones operated by the company. Letters were mailed to company and responses requested within 15 days. When no response for either evaluation was received, staff wrote certified letters to the company. The USPS returned both receipts, which showed the letters were signed for and delivered. Again, the company did not respond. Staff has since learned that the pay station in Micanopy has been disconnected and the pay station in Tallahassee is now operated by another certificated company.

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Staff believes that Payphone Service Company's conduct in failing to respond to Commission staff's inquiries in apparent violation of Commission Rule 25-4.043, F.A.C., has been "willful"

in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refunds For 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as Payphone Service Company's conduct at issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission order Payphone Service Company to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have Certificate No. 5892 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, F.A.C. The company's response should contain specific allegations of fact or law. If Payphone Service Company fails to respond to the show cause, and the fine is not paid within 10 business days after the 21 day show cause period, Certificate No. 5892 should be canceled. If the fine is paid, it should be remitted by the Commission to the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation on Issues 1 and 2, this docket should be closed upon issuance of a consummating order and upon receipt of the fines and fees, the required information, or cancellation of the certificate, unless a person whose substantial interests are affected by the Commission's decision files a protest to the proposed agency action within 21 days of the issuance of the Order.

Furthermore, if the Commission approves staff's recommendation in Issue 3, the company will have 21 days to respond in writing to the Commission's show cause order explaining why it should not have its certificate canceled or be fined in the amount proposed. If the company timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the company fails to respond to the show cause order, this docket may be closed upon receipt of the fine and fees or cancellation of the certificate and upon issuance of an order consummating the Commission's proposed agency action in Issues 1 and 2. (K. Peña; B. Keating)

STAFF ANALYSIS: If the Commission approves staff's recommendation on Issues 1 and 2, this docket should be closed upon issuance of a consummating order and upon receipt of the fines and fees, the required information, or cancellation of the certificate, unless a person whose substantial interests are affected by the Commission's decision files a protest to the proposed agency action within 21 days of the issuance of the Order.

Furthermore, if the Commission approves staff's recommendation in Issue 3, the company will have 21 days to respond in writing to the Commission's show cause order explaining why it should not have its certificate canceled or be fined in the amount proposed. If the company timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the company fails to respond to the show cause order, this docket may be closed upon receipt of the fine and fees, the required information, or cancellation of the certificate and upon issuance of an order consummating the Commission's proposed agency action in Issues 1 and 2.