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: DECEMBER 22, 1998

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

FROM: DIVISION OF COMMUNICATIONS (ISLER)
DIVISION OF LEGAL SERVICES (WATTS)

RE: REQUEST FOR WAIVER FROM REQUIREMENT OF RULE 25-24.515(8), FLORIDA ADMINISTRATIVE CODE, THAT EACH TELEPHONE STATION SHALL ALLOW INCOMING CALLS

DOCKET NO. 981043-TC - PEOPLES TELEPHONE COMPANY, INC.

AGENDA: 01/05/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: STATUTORY DEADLINE WAIVED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981043.RCM

CASE BACKGROUND

Peoples Telephone Company has submitted a request to block incoming calls at its pay telephone located at 6511 NW 12th Avenue, Miami, Florida. The request was submitted on a properly completed Form PSC/CMU 2 (12/94).

The Waiver Petition was filed on August 19, 1998. The Notice of Petition for Waiver was submitted to the Secretary of State for publication in the Florida Administrative Weekly September 2, 1998. The comment period ended September 26, 1998. No comments were submitted. The statutory deadline for the Commission's decision regarding this petition was waived by Peoples Telephone.

This item was deferred from the November 3, 1998 Agenda Conference at the Commissioners' request to allow staff time to gather additional information from the Miami Police Department.

Staff wrote the Miami Police Chief and asked for the additional information on November 5, 1998. Chief William E. O'Brien responded on November 24. (ATTACHMENT A) Staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Peoples Telephone Company a waiver from the requirement that each telephone station shall allow incoming calls for the pay telephone numbers at the Pyramid Funding Corporation located at 6511 NW 12th Avenue, Miami, Florida?

RECOMMENDATION: Yes. (Isler)

STAFF ANALYSIS: Rule 25-24.515(8), Florida Administrative Code, provides in the pertinent part;

> Each telephone station shall allow incoming calls to be received, with the exception of those located at penal institutions, hospitals and schools, and at locations specifically exempted by the Commission. There shall be no charge for receiving incoming calls. Requests for exemption from the requirement that each telephone station allow incoming calls shall be accompanied by a completed FORM PSC/CMU-2 (12/94), which is incorporated into this rule by reference.

Peoples Telephone Company has submitted a properly completed Request to Block Incoming Calls form for the instrument located at 6511 NW 12th Avenue, Miami, Florida. Staff has reviewed the form and found it to have been signed by an officer of the pay telephone company, the location owner, and the chief of the law enforcement agency of the jurisdiction in which the pay telephone is located.

By signing FORM PSC/CMU-2 (12/94), the company has agreed to provide central office-based intercept at no charge to the end-user and to prominently display a written notice directly above or below the telephone number which states "Incoming calls blocked at the request of law enforcement." Furthermore, there is language on the form above each of the three parties' signatures which states "I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public-servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree."

At the November 3, 1998, Agenda Conference, this item was deferred at the Commissioners' request. Staff was requested to gather additional information from the Miami Police Department. Staff wrote the Police Chief on November 5, 1998 and requested the

Chief to explain how granting an incoming call waiver would eliminate or help control any criminal activity. Staff also requested any written documentation that would support the request such as police reports, citizen complaints, or community policing action plans.

Police Chief William E. O'Brien responded on November 24 and stated that he had received several complaints from the residents at this location that narcotics dealers and users constantly hang around the phone and conduct illicit transactions. Chief O'Brien provided staff with a computer printout of the crime analysis report for this location between January 1 and November 16, 1998, which showed a total of 43 calls from residents. Chief O'Brien stated that 95% of the arrests and calls were narcotics related. Chief O'Brien stated that "It would be unfair to punish law-abiding residents in our attempt to abate this nuisance. Instead of removing the phone, it is suggested that all incoming calls be blocked." In addition, Chief O'Brien stated that "Blocking incoming calls will eventually slow down criminal activities in the area."

Based on Miami Police Chief O'Brien's response, staff recommends that the waiver requested in this docket should be granted. The waiver is being requested in accordance with the requirements of Chapter 120.542(2), Florida Statutes. Peoples Telephone has demonstrated that granting this waiver will not impede the continued provision of pay telephone service to the using public as intended by the underlying statute, Chapter 364.345, Florida Statutes.

In addition, the petitioner has demonstrated that granting this waiver will lift the "substantial hardship" that the rule imposes on law enforcement and the location provider.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action. (Watts)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed.

DOCKET NO. 981043-TC
DATE: DECEMBER 22, 1[illegible]8
ATTACHMENT A

City of Miami

WILLIAM E. O'BRIEN
Chief of Police

DONALD H. WARSHAW
City Manager

NOV 24 1998

1998

LEGAL DIVISION

Ms. Clintina B. Watts
Staff Attorney
State of Florida
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Attorney Watts:

I am in receipt of your letter dated November 5, 1998, in which you asked for our assistance with a Request to Block Incoming Calls for the payphone located at the Pyramid Funding Corporation, 6511 NW 12th Avenue, Miami, pay telephone number (305) 754-9960. In response to your letter, I offer the following:

The Model City NET Office has received several complaints from the residents of 6511 NW 12 Avenue. The primary complaint is that narcotics dealers and users constantly hang around the phone and conduct illicit transactions. Ninety-five percent (95%) of the arrests and calls for service are narcotics related. It would be unfair to punish the law-abiding residents in our attempt to abate this nuisance. Instead of removing the phone, it is suggested that all incoming calls be blocked.

The Crime Suppression Unit of the North District also made several arrests at said location. Known drug dealers use this payphone to make illegal narcotic transactions. Blocking incoming calls will eventually slow down criminal activities in the area.

Attached is a copy of crime analysis report for said address.

In the future if you need further assistance, please contact Major Gerald L. Darling, Commander of the North District, at (305) 795-2313.

Sincerely,

William E. O'Brien
Chief of Police

ADMINISTRATION
MAIL ROOM
NOV 30 9 36 AM '98
RECEIVED

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REPORT VIA OF8-LOCATIONS KEY=(01,'12          ','AV','NW',006511,'                ',000000) THR
U (01,'12          ','AV','NW',006511,'99999999999999999',999999) WHERE (18FINAL-SIGNAL >= 13 AN
D 18TERMINATION-CODE = 01 AND (CENTURYDAY(18ENTRY-DATE) BETWEEN(CENTURYDAY(1998,01,01),CENTURYD
AY(1998,11,17),BOTH)) AND 18AREA WITHIN(031,032) AND 18ARREST-REPORT >= 1 AND 18STREET-NAME = '
12' AND 18STREET-TYPE = 'AV'):SEQ 18FINAL-SIGNAL
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11/16/98

CRIME ANALYSIS REPORT

CITY OF MIAMI
CRIME ANALYSIS DETAIL
PREPARED BY K. WHITE
CALLS FOR SERVICE
REPORTING AREA 31/32 6511 NW 12 AVENUE
JANUARY THRU YEAR TO DATE

FINAL SIGNAL	INCIDENT NUMBER	DATE	TIME	UNIT1 NUMBER	NUMBER	QT	STREET	TYPE	INTERSECTION	MOTOR VEH REPORT	ARREST REPORT
14	X1391482	980519	1846	5779	6511	NW	12	AV		0	1
14	X1381183	980518	754	1114	6511	NW	12	AV		0	1
14	X1381937	980518	2055	5973	6511	NW	12	AV		0	1
14	X1371883	980517	2140	2522	6511	NW	12	AV		0	1
14	X1371881	980517	2138	5315	6511	NW	12	AV		0	1
14	X1282082	980508	2151	2526	6511	NW	12	AV		0	2
14	X1282080	980508	2150	2526	6511	NW	12	AV		0	2
14	X1282078	980508	2148	2526	6511	NW	12	AV		0	2
14	X1241713	980504	1736	5736	6511	NW	12	AV		0	1
14	X1241647	980504	1626	5577	6511	NW	12	AV		0	1
14	X1241646	980504	1625	5577	6511	NW	12	AV		0	2
14	X1231057	980503	38	2516	6511	NW	12	AV		0	2
14	X1231047	980503	33	2516	6511	NW	12	AV		0	2
14	X1231022	980503	14	2515	6511	NW	12	AV		0	2
14	X1212153	980501	2313	2522	6511	NW	12	AV		0	1
14	X1191681	980429	1548	1174	6511	NW	12	AV		0	1
14	X0401955	980209	2059	5569	6511	NW	12	AV		0	1
14	X0402010	980209	2142	5577	6511	NW	12	AV		0	1
14	X0351934	980204	1829	2526	6511	NW	12	AV		0	1
14	X2881206	981010	457	1182	6511	NW	12	AV		0	1
14	X2121782	980781	1822	2526	6511	NW	12	AV		0	1
14	X2101867	980729	2014	5824	6511	NW	12	AV		0	1
14	X1962065	980715	2251	5541	6511	NW	12	AV		0	1
14	X1882108	980702	2343	6650	6511	NW	12	AV		0	1
14	X1772263	980626	2347	2516	6511	NW	12	AV		0	3
14	X1772262	980626	2346	2516	6511	NW	12	AV		0	2
14	X1622042	980611	2241	2516	6511	NW	12	AV		0	2
14	X1621990	980611	2154	2516	6511	NW	12	AV		0	2
14	X1621968	980611	2142	2521	6511	NW	12	AV		0	2
14	X1572025	980606	2142	2516	6511	NW	12	AV		0	2
14	X1572011	980606	2135	2533	6511	NW	12	AV		0	2
14	X1572007	980606	2132	2515	6511	NW	12	AV		0	1
14	X1571994	980606	2128	2522	6511	NW	12	AV		0	2
14	X1571987	980606	2122	2513	6511	NW	12	AV		0	2
14	X1571983	980606	2120	2516	6511	NW	12	AV		0	2
14	X1571981	980606	2119	2520	6511	NW	12	AV		0	2
14	X1401699	980520	1705	5779	6511	NW	12	AV		0	3

CITY OF MIAMI
CRIME ANALYSIS DETAIL
PREPARED BY K. WHITE
CALLS FOR SERVICE
REPORTING AREA 31/32 6511 NW 12 AVENUE
JANUARY THRU YEAR TO DATE

FINAL SIGNAL	INCIDENT NUMBER	DATE	TIME	UNIT1 NUMBER	NUMBER	QT	STREET	TYPE	INTERSECTION	MOTOR VEH REPORT	ARREST REPORT
14	X1401077	980520	230	1182	6511	NW	12	AV		0	1
14 TOTAL CASES=88											
82	X1211042	980501	119	1181	6511	NW	12	AV		0	1
82 TOTAL CASES=1											
55	X0081090	980108	344	1182	6511	NW	12	AV		0	1
55	X0861264	980327	848	1142	6511	NW	12	AV		0	1
55	X1401092	980528	258	1135	6511	NW	12	AV		0	1
55	X2971470	981024	1801	1144	6511	NW	12	AV		0	1
55 TOTAL CASES=4											

TOTAL CASES=48