



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-

RECEIVED-FPSC
MAY 25 AM 10:13
RECORDS AND REPORTING

DATE: MAY 25, 2000

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

FROM: DIVISION OF LEGAL SERVICES (KEATING) *PK*
DIVISION OF TELECOMMUNICATIONS (M. WATTS) *WA* *D*

RE: DOCKET NO. 000236-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST PUSH BUTTON PAGING & COMMUNICATIONS, INC. FOR APPARENT VIOLATION OF SECTION 364.183(1), F.S., ACCESS TO COMPANY RECORDS.

AGENDA: 06/06/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\000236.RCM

CASE BACKGROUND

- December 5, 1998 - Push Button Paging & Communications, Inc. (Push Button Paging) obtained Florida Public Service Commission Alternative Local Exchange Company Certificate Number 5727.
- June 25, 1999 - Staff mailed a certified letter requesting information necessary for inclusion in the local competition report required of the Commission by Section 364.386, Florida Statutes. Staff requested a response by August 6, 1999.
- July 7, 1999 - Push Button Paging signed for and received the certified letter.

DOCUMENT NUMBER-DATE

06455 MAY 25 8

FPSC-RECORDS/REPORTING

DATE: May 25, 2000

- December 6, 1999 - Staff sent a second certified letter requesting Push Button Paging respond to the data request no later than December 22, 1999.
- December 8, 1999 - Push Button Paging signed for and received the second certified letter.
- February 22, 2000 - After receiving no response to its June 25, 1999 and December 6, 1999 certified letters, staff opened this docket to investigate whether Push Button Paging should be required to show cause why it should not be fined or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.
- April 10, 2000 - Commission Order No. PSC-00-0666-SC-TX was issued to show cause Push Button Paging for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.
- April 24, 2000 - Push Button Paging submitted an offer to settle this case. (Attachment A, page 5)

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Push Button Paging & Communications, Inc. to resolve the apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records?

RECOMMENDATION: No. The Commission should not accept the company's settlement proposal. **(M. Watts)**

STAFF ANALYSIS: On April 24, 2000, Push Button Paging submitted its response to the Order to Show Cause (Attachment A, page 5), including an offer to settle. Push Button Paging's response to Commission Order No. PSC-00-0666-SC-TX maintained that it did send the requested information, but could provide no documentation to support its claim. In its settlement offer, Push Button Paging proposed the following:

- A monetary settlement of \$100

DATE: May 25, 2000

- To send future responses to requests for information by certified mail.

Staff believes the terms of the settlement offer are not acceptable. Push Button Paging believes that the amount of the fine is too high for small businesses, effectively undermines small businesses' ability to compete with Local Exchange Companies, and will cause small businesses to go out of business. Push Button Paging believes that it will be forced to go out of business by this fine or any settlement consistent with that offered by other companies.

Staff understands Push Button Paging's concerns, but believes that a settlement of \$100 is too low for any company. Two certified letters were sent to the company six months apart in an effort to obtain the information contained in company records for inclusion in the local competition report for the Legislature. It is imperative that the Commission receive full participation to accurately reflect the status of local telecommunication competition to the Legislature and the Governor. Given that two attempts to obtain the information were made with strong language to emphasize the importance of the information to the Commission and the Legislature, staff believes that a higher settlement amount is warranted than in simple non-response cases. The Commission has accepted settlement offers of \$3,500 and \$4,000 from other Alternative Local Exchange Companies (ALECs) for the same offense, none of which reported any revenues for the preceding two years. Historically, the Commission has only minimally regulated the ALEC industry in an effort to foster competition consistent with Florida Statutes. However, staff believes that the Commission should still expect compliance with the rules and statutes that are in place for ALECs. Therefore, staff recommends the Commission not accept Push Button Paging's offer of settlement.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 1 is approved, this docket should remain open pending the resolution of the show cause proceeding. Push Button Paging must respond to the original show cause order within 21 days of the issuance of this Order denying the settlement. If Push Button Paging fails to respond to the Order to Show Cause and the fine is not received within ten business days after the expiration of the show cause

DOCKET NO. 000236-1X

DATE: May 25, 2000

response period, then Certificate No. 5727 should be canceled and this docket should be closed administratively. **(Keating)**

STAFF ANALYSIS: This docket should remain open pending the resolution of the show cause proceedings. Push Button Paging must respond to the original show cause order within 21 days of the issuance of this Order denying the settlement. If Push Button Paging fails to respond to the Order to Show Cause and the fine is not received within ten business days after the expiration of the show cause response period, then Certificate No. 5727 should be canceled and this docket should be closed administratively.

Push Button Paging & Communications, Inc (706)793-4161



2000 APR 25 PM 3:35

FLORIDA
PUBLIC SERVICE COMM.
DIV. OF TELECOMMUNICATIONS

00 APR 21 PM 12:59
MAIL ROOM

April 19, 2000

Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

000236-T X

Re: Docket No. 00236-T

To whom it may concern:

It is in the best interest of Push Button Paging to report all information to the Commission upon request whether the request is complied by fax or mail in a timely manner. As a telecommunications provider, Push Button understands and fully agrees with the rules and regulations of the Florida Public Service Commission.

Push Button Paging's position in respect to being fined 10,000.00, or the possibility of having our certificate canceled for this particular incident is a harsh penalty. Push Button did send the requested information to the Commission by standard mail not knowing that the information was never received. Push Button should have been more responsible by sending the requested information via certified mail and will do so in the future.

Push Button would like to ask the Commission for a chance to prove our credibility and at this time would like to offer a settlement of \$100.00 to resolve this matter and in the future, all correspondence will be sent via certified mail to prevent any problems.

Push Button would also like to advise the Commission that as of this time, we have not conducted any business in the state of Florida but fully intend to do so with a target date of the 3rd quarter of 2000.

Thank you.

Pamela Pew

Pamela Pew
Account Manager

- ___ AFA
- ___ APP
- ___ CAF
- ___ CMC
- ___ CTR
- ___ EAG
- ___ LEG
- ___ MAS
- ___ OPC
- ___ PRR
- ___ SEC
- ___ VAW
- ___ CTH

DOCUMENT NUMBER-DATE
05014 APR 24 8
FPSD-RECORDS-REPORTING