



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECORDS AND REPORTING

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RECEIVED -FPSC

DATE: MARCH 22, 2001

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

FROM: DIVISION OF LEGAL SERVICES (KNIGHT) *wok*
DIVISION OF COMPETITIVE SERVICES (M. WATTS) *mw*

RE: DOCKET NO. 000482-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST MARIA E. DELGADO D/B/A GLOBAL COMMUNICATION FOR APPARENT VIOLATION OF RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES.

AGENDA: 04/03/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\000482R4.RCM

CASE BACKGROUND

- January 27, 2000 - Staff mailed Maria E. Delgado d/b/a Global Communication (Global) a letter informing it of a pay telephone rule violation found in Tampa with a response due on February 11, 2000.
- January 31, 2000 - Global reported \$84,042.32 revenues on its 1999 regulatory assessment fee return.
- February 2, 2000 - Staff mailed the company a letter informing it of a pay telephone rule violation found in New Port Richey with a response due on February 17, 2000.
- February 22, 2000 - The company did not respond to either letter; therefore, staff mailed the company certified letters for each of the violations noted above with a response due on March 8, 2000.

DOCUMENT NUMBER-DATE

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FPSC-RECCPDS/REPORTING

- February 25, 2000 - The United States Postal Service return receipt showed the certified letters (mailed in one envelope) were signed for and delivered on this date.
- March 16, 2000 - April 17, 2000 - Staff called the telephone number listed in the Master Commission Directory for the company four times during this period and left messages each time for a return call. No return calls were received.
- April 24, 2000 - Staff opened this docket to investigate whether Global should be ordered to show cause why it should not be fined or have its certificate canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.
- June 30, 2000 - The Commission issued Order No. PSC-00-1180-SC-TC ordering Global to show cause why it should not be fined \$10,000 or have its certificate canceled.
- August 11, 2000 - Global submitted an offer of \$100 and a promise to send all future communications to the Commission by certified mail, return receipt requested, to settle this case. In the settlement offer, Global claims it faxed its responses to staff on March 7, 2000, but could offer no proof.
- October 17, 2000 - Staff presented its recommendation to the Commission, recommending that the Commission reject the company's settlement offer. The Commission declined to vote on staff's recommendation at that time, telling Ms. Delgado that "staff will be contacting you again and give you the opportunity if you can come forward with any more proof of your attempts to contact staff."
- December 18, 2000 - Staff issued a subpoena to MCI Worldcom Network Services, Inc. (MCI) requesting the March 2000 call records for the all numbers from the location that Maria E. Delgado claims she faxed responses to staff regarding the pay telephone rule violation notifications. Maria E. Delgado was unable to obtain call records from her employer.
- January 17, 2001 - MCI submitted its response to the above subpoena.
- January 26, 2001 - Global submitted its revised settlement offer (Attachment A, pages 7-8).

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The Commission is vested with jurisdiction over this matter pursuant to Sections 364.185, 364.285 and 364.3375, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Maria E. Delgado d/b/a Global Communication to resolve the apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: No. The Commission should not accept the company's settlement proposal. Records indicate that the company did not respond to the Commission for more than two months, instead of within 15 days as required by Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and staff believes that the company's proposal of \$100 to settle this proceeding is insufficient. **(M. Watts)**

STAFF ANALYSIS: Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, 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 first contacted Global concerning service deficiencies on January 27, 2000, with a response due on February 11, 2000. According to records submitted by Global and those obtained by staff from MCI, Global did not try to contact staff in response until April 20, 2000, over two months later.

Staff contacted Global with the results of the call record investigation and gave it the opportunity to revise its settlement offer. Global responded with the following proposal (Attachment A, pages 7-8):

- A monetary settlement of \$100, and
- To send all future communications to the Commission by certified mail, return receipt requested.

Global's proposal is essentially identical to its previous proposal presented in staff's recommendation at the October 17, 2000, Agenda Conference, with the exception that a notarized statement has been added. The notarized statement is from Michael Byars, Chief Operating Officer at Kash-N-Karry headquarters in Tampa, Florida. In it he states that he gave Ms. Delgado

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permission to send her response to the Commission via the Kash-N-Karry facsimile machine. The settlement proposal also stated that the particular facsimile machine in question scans documents into memory and, due to the volume of facsimiles, may not have transmitted the document.

Notwithstanding the above statements by Global, and in view of the call records submitted by MCI, staff believes the terms of the settlement offer are not acceptable. Staff's recommendation of a \$10,000 fine is consistent with previous decisions in Docket Nos. 992030-TI, Initiation of show cause proceedings against U.S. Operators, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries, and 981375-TC, Cancellation by Florida Public Service Commission of Pay Telephone Certificate No. 5041 issued to Pay-Tel Services Inc. for violation of Rules 25-24.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, and 25-4.043, F.A.C., Response to Commission Staff Inquiries. In these dockets, the Commission accepted contributions of \$2,500 as settlement for the apparent violation of Rule 25-4.043, Florida Administrative Code.

Staff believes that the possibility of a malfunction with the facsimile machine used may constitute a mitigating factor in the company's favor and advised Ms. Delgado that it would recommend that the Commission accept a \$1,000 settlement in this case. Ms. Delgado declined to offer a \$1,000 settlement. Staff believes that a contribution of not less than \$1,000 is warranted to settle this docket.

Therefore staff recommends that the Commission reject the company's settlement proposal. Records indicate that the company did not respond to the Commission for more than two months, instead of within 15 days as required by Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and staff believes that the company's proposal of \$100 is insufficient.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. With the approval of Issue 1, this docket should remain open pending the resolution of the show cause proceedings. Global must respond to the original show cause order (PSC-00-1180-SC-TC, dated June 30, 2000) within 21 days of the issuance of this Order denying the settlement. If Global fails to respond to Order No. PSC-00-1180-SC-TC and the fine is not received within ten business days after the expiration of the show cause response period, then Certificate No. 3874 should be canceled and this docket should be closed administratively. **(Knight)**

STAFF ANALYSIS: This docket should remain open pending the resolution of the show cause proceedings. Global must respond to the original show cause order (PSC-00-1180-SC-TC, dated June 30, 2000) within 21 days of the issuance of this Order denying the settlement. If Global fails to respond to Order No. PSC-00-1180-SC-TC and the fine is not received within ten business days after the expiration of the show cause response period, then Certificate No. 3874 should be canceled and this docket should be closed administratively.

Global Communication
4020 B Cortez Drive
Tampa, Fla. 33614
Office: (813) 935-1624
Fax: (813) 932-5518

ORIGINAL

REVISED

Date: January 24, 2001

To: Florida Public Service Commission - Full Commission Prehrg Officer ADM
LEG: Knight; CMU: M. Watts

From: Maria E. Delgado d/b/a Global Communication

Subject: Docket No. 000482-TC

Since the last agenda, I Maria E. Delgado d/b/a Global Communication was notified that Melinda Watts requested the phone records. Since so much time has lapsed, I was under the impression that this was all behind me and resolved, therefore her phone call caught me by surprise.

As previously stated, I have been working for Kash n' Karry for 16 years. I obtained permission from my supervisor to send the fax in question from this location. Due to the volume of faxes, this may have gone into memory and never transmitted. The only proof I have to offer is a notarized statement from Michael Byars, Chief Operating Officer that is attached to this response. I also want to reinstate that all my responses to the Public Service Commission will be send via certified mail to prevent this problem from ever occurring again (you can verify that I have been doing it since this problem aroused). My offer of \$100 stills stands, as this is the first problem that has ever occurred of this nature.

Please review my history on file and reconsider this offer on good faith.

Sincerely,

Maria E. Delgado
D/B/A Global Communication

APP
CAF
CMP
COM
CTR
ECR
LEG
OPC
PAL
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SER
OTH

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DOCUMENT NUMBER-DATE
01196 JAN 26 01
FPSC-RECORDS/REPORTING



Kash n' Karry

Fresh, Fast n' Friendly

January 25, 2001

Florida Public Service Commission - Full Commission Prehrg Officer ADM
LEG: Knight; CMU: M. Watts

RE: Maria E. Delgado d/b/a Global Communication, Subject: Docket No. 000482-TC

To Whom It May Concern:

Maria Delgado, d/b/a Global Communication, requested authorization to send a personal fax in March '2000, which was granted. I am told you never received this fax, however I do not feel she would have requested permission to send and not follow through.

In working with Maria over the past year and half, I have found Maria to be a person with very high principles. She is honest and very responsible in her job duties. Therefore, I feel judgment should be made in here favor.

Sincerely,

FRESH, FAST n' FRIENDLY

Michael D. Byars
Chief Operating Officer

MDB/tmh

CERTIFICATION

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 25th day of January 2001 by Michael D. Byars who is personally known to me or has produced n/a as identification and who (did) (did not) take an oath.

Commission #: CC 808067

Expires: February 10, 2003

Notary: Tina M. Hicks

Signature of Notary

