

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause )	DOCKET NO.:	880731-TC
proceedings against Florida )	ORDER NO.:	21160
Telesystems, Inc. for failure to )	ISSUED:	5-4-89
comply with Commission Order No. )		
18904 and Rule 25-24.512, F.A.C. )		

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION

ORDER GRANTING CERTIFICATE  
AND  
CANCELLING CERTIFICATE

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 formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

Accordingly, we hereby announce our intention to approve the application for a certificate of public convenience and necessity for authority to provide private pay telephone service filed by Florida Telesystems, Inc. (Telesystems) on August 5, 1988, pursuant to Rule 25-24.513, Florida Administrative Code. We also announce our intention to cancel Certificate of Public Convenience and Necessity No. 86, held by Florida Tel & Tel Coin Telephones, Inc. (Florida Tel) due to the utility's failure to comply with Rule 25-24.512, Florida Administrative Code, which prohibits the assignment or transfer of a certificate without Commission approval.

INTRODUCTION

We note that our action in the above-referenced docket will consist of two orders. In this order, we will consider Telesystems' application for authority to provide private pay telephone service, as well as the cancellation of Florida Tel's Certificate No. 86. Our second order in this docket, which shall be released concurrently with this one, shall order Telesystems to show cause why it should not be fined five thousand dollars (\$5,000) for its improper use of Florida Tel's Certificate in violation of Rule 25-24.512, Florida Administrative Code, and five thousand dollars (\$5,000) for its failure to comply with Order No. 18904.

BACKGROUND

By Order No. 14396, issued on June 12, 1985, in Docket No. 850073-TC, we approved Florida Tel's application for authority

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to provide private pay telephone service. Accordingly, Florida Tel was issued Certificate No. 86.

In September, 1987, in response to a consumer complaint, the Commission notified Telesystems that its pay telephones were in violation of Commission rules. Additionally, the Commission informed Telesystems that its preliminary investigation into the complaint revealed that Telesystems had obtained its local exchange access lines under Certificate No. 86 held by Florida Tel. A Telesystems' representative informed the Commission that Telesystems had acquired Florida Tel and that the company's failure to request a transfer of the certificate was an oversight between its attorneys in Miami and Tallahassee.

On October 7, 1987, Docket No. 877045-TP was assigned to Telesystems' request for transfer of Florida Tel's certificate. The Commission propounded interrogatories to Telesystems and met with its local attorney to obtain an understanding of the interrelationship between Florida Tel and Telesystems. We learned that it was actually Florida Tel that was operating the pay telephone service; however, it was operating under the Telesystems' name. Additionally, we were told that both companies were owned by the stockholders of Florida Tel. From what we learned, it appeared as if what Florida Tel wanted to do was to continue to operate, but it wanted to offer service under the name Telesystems. Therefore, Florida Tel was instructed to withdraw Telesystems application for transfer and submit the appropriate request for a name change.

In January, 1988, Florida Tel's attorney filed a notice withdrawing the transfer application and stated that "Florida Tel intended to use the name Telesystems in certain instances in its dealings with the public." By Order No. 18904, issued February 22, 1988, we approved the withdrawal of the transfer application and directed Florida Tel to obtain authority to operate under the name Telesystems.

However, on April 19, 1988, we were informed that Telesystems intended to seek a separate certificate. On May 25, 1988, Docket No. 880731-TC was opened for the purpose of initiating show cause proceedings against Telesystems for its failure to obtain authority to operate under the Telesystems' name in compliance with Order No. 18904, and its improper use of a certificate to provide pay telephone service in violation of Rule 25-24.512, Florida Administrative Code.

The Commission has engaged in various forms of discovery in an attempt to discern what has taken place between Florida Tel and Telesystems. On August 5, 1988, Telesystems responded to our interrogatories, and on October 19, 1988, we deposed an officer for both companies.

#### DISCUSSION

Our investigation into the operations of Florida Tel failed to produce any evidence to support issuing a separate certificate to Telesystems without cancelling Florida Tel's certificate. Through our investigation, it appears that Florida Tel and Telesystems are one company. Consequently, there is no justification for issuing a certificate in both names, particularly since a certificate represents statewide authority.

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Therefore, because the utility has indicated a preference for having its certificate listed in Telesystems' name, we will cancel Florida Tel's certificate. Additionally, we will issue the utility a certificate in the name of Florida Telesystems, Inc. However, Telesystems is authorized to operate only under the name Florida Telesystems, Inc. Accordingly, when providing pay telephone service, it must correctly identify itself to the public by doing business in its legally registered name.

Finally, we note that as a result of our separate show cause proceeding in this docket, Telesystems is put on notice that any future violations of our rules will result in further Commission action.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Telesystems, Inc.'s application for a certificate of public convenience and necessity is hereby granted if no protest is filed within the timeframe established below. It is further

ORDERED that Florida Tel & Tel Coin Telephones, Inc.'s Certificate of Public Convenience and Necessity No. 86 is hereby cancelled if no protest to our action is filed within the timeframe set forth below. It is further

ORDERED that this docket remain open pending resolution of the show cause proceeding we have initiated concurrently with our action herein.

By ORDER of the Florida Public Service Commission this 4th day of MAY, 1989.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

DWS

8971G

by: Kay Hizon  
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), to notify parties of any administrative hearing or judicial review of Commission orders that may be available, as well as the procedures and time limits that apply to such further proceedings. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose

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substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 24, 1989. In the absence of such a petition, this order shall become effective May 24, 1989, as provided by Rule 25-22.29(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on May 25, 1989, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.