

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Roberta L. Marcus, Inc. d/b/a Marcus Centre, for apparent violation of Rule 25-24.565, F.A.C., Certificate of Public Convenience and Necessity Required.

DOCKET NO. 090086-TS

In re: Application for certificate to provide shared tenant telecommunications service by Roberta L. Marcus, Inc. d/b/a Marcus Centre.

DOCKET NO. 090187-TS

ORDER NO. PSC-09-0611-PAA-TS

ISSUED: September 8, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER ACCEPTING SETTLEMENT PAYMENT AND
GRANTING STS 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 a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Background

On October 24, 2008, we received a customer complaint against Roberta L. Marcus, Inc. d/b/a Marcus Centre (Marcus Centre). After receiving the complaint, we determined that Marcus Centre was providing shared tenant services (STS) in Florida and had not obtained a STS certificate from this Commission. Our staff notified the company, via certified mail, of its requirement per Rule 25-24.565, Florida Administrative Code (F.A.C.), Certificate of Public Convenience and Necessity Required, to obtain a STS certificate and requested that the company resolve the customer's complaint.

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FPSC-COMMISSION CLERK

After receiving our staff's letter, Marcus Centre contacted us to discuss the matter. The company agreed to submit an application to obtain a certificate to provide shared tenant services. The company also agreed to resolve the customer's complaint. The complaint was ultimately resolved; however, we never received the company's application for a STS certificate. Thus, our staff opened Docket No. 090086-TS to address the company's failure to submit an application.

On April 9, 2009, our staff filed a recommendation in Docket No. 090086-TS. The Agenda Conference was scheduled for April 21, 2009. After the recommendation was filed, Marcus Centre contacted us and requested a deferral. Marcus Centre claimed that it mailed a STS application along with the application fee to the Commission on February 5, 2009. However, we were unable to locate the application or verify that we ever received it. The company resubmitted the application and the application fee on April 14, 2009. Docket No. 090187-TS was established to address the company's application for a STS certificate.

This proposed agency action order addresses Marcus Centre's proposed settlement offer and the company's application for authority to provide shared tenant services in Florida. We are vested with jurisdiction over these matters pursuant to Sections 364.285, 364.33, 364.335, and 364.339, Florida Statutes.

II. Analysis

A. Proposed Settlement Offer

On April 9, our staff filed a recommendation to address Marcus Centre's apparent violation of Rule 25-24.565, F.A.C. The Agenda Conference was scheduled for April 21, 2009. However, the company contacted us and requested a deferral, which was approved.

The company claimed that it mailed a STS application, along with payment (check no. 12149) for the application fee, to us on February 5, 2009. If accurate, this means that the application was mailed prior to the docket opening and prior to the recommendation filing. The company stated that the application and check were mailed to us via First Class Mail. Because the recipient did not have to sign for the information, the company was unable to track the items mailed or verify that we received them. We were unable to locate the company's application or the application fee, indicating that we never received the items.

According to the company, the items mailed were never returned to Marcus Centre by the U.S. Postal Service and the check for the application fee was never deposited by this Commission. The company stopped payment on the check and resubmitted the application and the application fee via Federal Express. We received the application and the application fee on April 14, 2009. Upon receipt of the application, Docket No. 090187-TS was established to address the STS application. We also began negotiating settlement options with the company to resolve the compliance issues in Docket 090086-TS.

During negotiations, the company initially did not want to offer any monetary settlement because it believed that the obligation of submitting an application was met. We suggested that the company submit any information that would support its claim that an application and check

were mailed to us on February 5, 2009. In response, Marcus Centre submitted copies of the company's check registry showing where the check was written on February 5, 2009. The company also provided a copy of the confirmation letter from the bank verifying that a stop payment request was made. The company recognizes that the documentation provided does not definitively prove that the application and check were mailed. We did not note anything unusual about the check registry.

The company also argued that the primary purpose of its business was that of leasing commercial office space. The office spaces are turn-key, meaning that they are furnished. Local phone service, along with a live operator, are also available for use at the option of the tenant. The company offers a PBX system, along with a PBX operator, as a bonus feature to attract tenants. The extent to which the company is offering telephone service is very limited. The company has just the one property that can be configured to lease office space for up to 50 potential tenants.

On May 12, 2009, in an effort to resolve the docketed matter, Marcus Centre submitted a proposed settlement offer. The company proposed to submit a payment in the amount of \$500 to be deposited into the General Revenue Fund.

In other dockets, we have accepted settlement offers in the amount of \$5,000 when a company has failed to register as an intrastate interexchange carrier or a competitive local exchange company. We are not aware of any prior dockets that deal with a company's failure to obtain authorization from the Commission to provision shared tenant services. Marcus Centre is aware that the amount of its proposed settlement offer is not consistent with other offers that we have previously accepted. Marcus Centre does not believe that it should be subject to penalties or that it should be required to pay \$5,000 to settle this case.

Further, Marcus Centre attests that at this time, the company is not financially able to pay more than the \$500 amount proposed in its settlement offer. The company's business is limited to one office building in which it provides leased office space for up to 50 tenants. The company claims that due to the recession, it currently has fifteen vacancies. The company submitted its 2007 federal tax return, which shows a monetary loss of more than \$100,000.

Although the company's proposed settlement offer is not consistent with past offers accepted by this Commission, Marcus Centre only offers the shared tenant services, which includes a live phone attendant, thinking that the service will attract tenants. Tenants have the option to obtain services from other telecommunications companies. In most, if not all, prior cases before this Commission, the companies' primary business objectives were to provide interexchange or competitive local exchange services on a state-wide basis. Marcus Centre has no intention of offering STS services on a state-wide basis.

We are not able to confirm or deny that the company mailed the application and application fee prior to the docket being opened. Under the circumstances, we find that the company has provided sufficient information and explanation to mitigate the requirement for the company to pay a settlement of \$5,000.

B. STS Application

Section 364.339(2), Florida Statutes, states:

No person shall provide shared tenant service without first obtaining from the commission a certificate of public convenience and necessity to provide such service. The commission shall grant certificates to telecommunications companies upon showings that the applicants have sufficient technical, financial, and managerial capabilities to provide shared tenant services. The commission may require such service to be offered and priced differently to residential and commercial tenants if deemed to be in the public interest.

On April 14, 2009, Marcus Centre submitted an application to provide shared tenant services. We have reviewed the company's application. We find that the company has demonstrated it has sufficient technical and managerial capabilities to provide shared tenant services in Florida.

Regarding financial capability, Marcus Centre's 2007 federal tax return shows a loss of more than \$100,000. The company submitted several letters from various creditors and insurance companies that showed Marcus Centre pays bills timely. All of the creditors stated that Marcus Centre is both in good standing and has never been late on payments. The company also demonstrated that it has a Line of Credit account with Bank Atlantic that is also in good standing. We find that the documentation provided by the company indicates that it has the financial capability to provide STS services at 9990 S.W. 77th Avenue, Miami, Florida.

Section 364.339, F.S., provides us authority to prescribe the type, extent, and conditions under which STS services may be provided. In this case, we limit Marcus Centre's provisioning of STS services to the office building located at 9990 S.W. 77th Avenue, Miami, Florida. Marcus Centre does not object to this limitation as it owns no other facilities and only provides STS services as a way to attract commercial tenants.

III. Decision

We accept Roberta L. Marcus, Inc. d/b/a Marcus Centre's proposed settlement offer to submit a payment in the amount of \$500 to resolve the company's apparent violation of Rule 25-24.565, Florida Administrative Code, Certificate of Public Convenience and Necessity Required.

Additionally, we grant Roberta L. Marcus, Inc. d/b/a Marcus Centre a Certificate of Public Convenience and Necessity, STS Certificate No. 8761, to provide shared tenant services 9990 S.W. 77th Avenue, Miami, Florida.

STS providers are subject to Chapter 25-24, Florida Administrative Code, Part XII, Rules Governing Shared Tenant Service Provided by Other Than Local Exchange Telephone

Companies. STS providers are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Rule 25-4.041, Florida Administrative Code.

In addition, under Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee (RAF) if the certificate was active during any portion of the calendar year. A RAF Return notice **will be** mailed each December to Roberta L. Marcus, Inc. d/b/a Marcus Centre for payment by January 30th. Neither the cancellation of its certificate nor the failure to receive a RAF Return notice shall relieve this entity from its obligation to pay the RAF.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Roberta L. Marcus, Inc. d/b/a Marcus Centre's proposed settlement offer to submit a payment in the amount of \$500 to resolve the company's apparent violation of Rule 25-24.565, Florida Administrative Code, Certificate of Public Convenience and Necessity Required is accepted. It is further

ORDERED that we hereby grant Roberta L. Marcus, Inc. d/b/a Marcus Centre a Certificate of Public Convenience and Necessity, STS Certificate No. 8761, to provide shared tenant services at 9990 S.W. 77th Avenue, Miami, Florida. It is further

ORDERED that this Order shall serve as Roberta L. Marcus, Inc. d/b/a Marcus Centre's certificate and should, therefore, be retained as proof of certification. It is further

ORDERED that this docket should remain open pending the receipt of the \$500 settlement payment. The payment should be received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. The payment should be made payable to the Florida Public Service Commission and should identify the docket number and the company's name. Upon receipt of payment, the Commission shall forward it to the Division of Financial Services to be deposited into the General Revenue Fund. If Marcus Centre fails to pay the \$500 within fourteen (14) calendar days after the issuance of the Consummating Order, we will provide a copy of our Order to Marcus Centre's underlying carrier and notify the carrier to discontinue provisioning telephone service at 9990 S.W. 77th Avenue, Miami, Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket should be closed administratively upon receipt of the \$500 settlement payment or upon disconnection of telephone service at 9990 S.W. 77th Avenue, Miami, Florida.

By ORDER of the Florida Public Service Commission this 8th day of September, 2009.



ANN COLE
Commission Clerk

(SEAL)

JLM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 29, 2009.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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