

3-12-97
FILE COPY



Public Service Commission

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

DATE: January 16, 1997
TO: Blanca Bayo, Director of Records and Reporting
FROM: Noreen Davis, Director of Legal Services *nd*
 Walter D'Haeselcer, Director of Communications *WDH*
RE: Cancellation of Certificate Number 3253 and Closure of Docket Number 960285-TC

Attached is a copy of Order Number PSC-96-1406-FOF-TC which requires Telephonix, Inc. to pay a \$5,000 fine or have its certificate canceled for violation of the rules. Telephonix has not responded to the order, nor has it paid the \$5,000 fine. Therefore, please proceed with cancellation of the certificate and close Docket Number 960285-TC.

OK
SPS
1/16/97

- ACK _____
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 FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 960285-TC
proceedings against Telephonix,) ORDER NO. PSC-96-1406-FOF-TC
Inc. for violation of Rule 25-) ISSUED: November 20, 1996
24.515, F.A.C., Pay Telephone)
Service Requirements.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING FINE OR 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 a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Telephonix, Inc. (Telephonix) received a certificate (No. 3253) to provide pay telephone service on January 8, 1993. According to the 1995 annual report filed by the company, it currently operates 171 pay telephones in Florida and earned \$12,629.88 in intrastate gross revenues.

On April 8, 1996, the Commission issued Order No. PSC-96-0485-FOF-TC, requiring Telephonix to show cause why it should not be fined and/or have its certificate revoked for its apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service Standards. On April 29, 1996, Telephonix filed its response to the Order. The response did not specifically address the allegations contained in the Order but instead included correspondence Telephonix had faxed earlier in response to our letters notifying it of the apparent violations. The company's response also did not contain a request for hearing.

DECISION

The violations detailed in the Show Cause included: improper routing of calls; failure to provide wheelchair access; inadequate wiring; failure to post basic information and dialing instructions; and, failure to provide telephone directories. One or more of these violations were present on each of the thirty-nine payphones inspected by us. Telephonix has not contested these facts.

Ms. Betty Adams, Office Manager for Telephonix, sent in the company's response which was received on April 29, 1996. The response was not filed with the Division of Records and Reporting and we were unclear whether the undated letter was actually intended to be the company's response to Order No. PSC-96-0485-FOF-TC. We contacted Ms. Adams by telephone and she then asked that we consider the letter as the company's response along with the other correspondence she had included (responses to our service violation letters and an undated letter signed by Mr. Lance Johnson, President of Telephonix).

The letter signed by Mr. Johnson (page 20) states that the improper routing of calls on 20 of the 39 payphones we inspected resulted from lost programming features due to computer problems the company experienced. However, this claim is not substantiated with any repair records or programming costs. The letter also states that the programming has been restored and that the payphones are now properly routing calls. Telephonix also states that there was never an intent to violate our rules. Telephonix further states that it has corrected all violations noted by us; removed 25 payphones from service; and, totally replaced its field personnel.

Even if we accept the company's assertion that computer problems alone were the cause of the improper call routing, other service problems cited in our Order are not specifically addressed by this response. We are gratified that Telephonix has corrected the violations. Nevertheless, we find Telephonix allowed conditions to exist in which its payphones were in violation of multiple service standards. This is cause for a financial penalty to be imposed.

Section 364.285, Florida Statutes, Penalties, states in pertinent part:

- (1) The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter which is found

to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$25,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by it.

In previous dockets involving violations of our pay telephone service requirements, penalties ranging from \$500 to \$60,400 have been imposed. Taking into consideration the company's size, we find that Telephonix shall pay a fine in the amount of \$5,000. If Telephonix chooses not to pay the \$5,000 fine, we will cancel certificate no. 3253 without further action.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Telephonix, Inc. shall pay a fine of \$5,000 to the Florida Public Service Commission, with the monies to be forwarded to the Office of the State Treasurer for deposit in the General Revenue Fund, for multiple violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service Standards. It is further

ORDERED that Telephonix will have 30 days from the date the Order becomes final to pay the fine or respond to the Proposed Agency Action Order or certificate no. 3253 will be cancelled without further Commission action. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this Docket shall be closed when the fine is received or the certificate cancelled.

ORDER NO. PSC-96-1406-FOF-TC
DOCKET NO. 960285-TC
PAGE 4

By ORDER of the Florida Public Service Commission, this 20th
day of November, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: /s/ Kay Flynn
Chief, Bureau of Records

This is a facsimile copy. A signed
copy of the order may be obtained by
calling 1-904-413-6770.

(S E A L)

NSR/MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 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 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 11, 1996.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 the date described above, any party substantially 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 wastewater 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.