



Public Service Commission

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DATE: AUGUST 5, 1999

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

FROM: DIVISION OF LEGAL SERVICES (WATTS) *CBW CB*
DIVISION OF COMMUNICATIONS (ISLER) *PK RNT*

RE: DOCKET NO. 981487-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 5232 ISSUED TO FLORIDA COAST SYSTEMS INC. FOR VIOLATION OF RULES 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES, AND 25-24.520, F.A.C., REPORTING REQUIREMENTS.

AGENDA: AUGUST 17, 1999 - REGULAR AGENDA - MOTION FOR RECONSIDERATION - PARTICIPATION BY COMMISSIONERS AND STAFF ONLY - ORAL ARGUMENT NOT REQUESTED

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\981487.RCM

CASE BACKGROUND

Florida Coast Systems, Inc. (Florida Coast Systems) currently holds PATS Certificate No. 5232 issued by the Commission on October 8, 1997, authorizing the provision of pay telephone service. The Division of Administration advised our staff by memorandum that Florida Coast Systems had not paid the regulatory assessment fees (RAFs) required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the year 1997.

On January 20, 1999, Order No. PSC-99-0100-FOF-TC was issued to impose a \$500 fine for non-payment of the fees and accrued statutory penalties and interest charges. Subsequently, the company responded to the order by letter dated January 27, 1999. In this letter, the company provided proof that it had paid the 1997 RAFs

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on a timely basis. However, the company's response did not provide the information required in the Order concerning the reporting requirements violation or pay the \$500 fine. Thus, on June 8, 1999, Order No. PSC-99-1174-FOF-TC was issued vacating, in part, Order No. PSC-99-0100-FOF-TC ordering a fine for non-payment of RAFs but retaining the imposition of a fine for reporting violations. Subsequently, on June 13, 1999, the company filed a motion for reconsideration of the reporting violations fine. The company maintained they had reported the information, as required, in a timely manner.

This recommendation will address the Motion for Reconsideration.

DISCUSSION OF ISSUES

ISSUE 1: Should the Motion for Reconsideration be granted?

RECOMMENDATION: No, the Commission should deny Florida Coast Systems, Inc.'s Motion for Reconsideration. **(WATTS)**

STAFF ANALYSIS: The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

On June 8, 1999, Order No. PSC-99-1174-FOF-TC was issued to vacate the \$500 fine imposed to Florida Coast Systems for apparent violations of the regulatory assessment fees rule; however, the \$500 fine for the reporting requirements violation was not vacated. Subsequently, the company responded to the Order by a Motion for Reconsideration dated June 13, 1999. In its motion, the company maintains it had updated its information with the Commission in compliance with Commission Rules. The company contends that it

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updated its information through the Florida Public Service Commission's internet web page. Additionally, the company alleges it sent a printout of its web page listing the updated information to the Public Service Commission within the required timeframe.

Staff believes that the company is merely rearguing the facts considered by the Commission in Order No. PSC-99-1174-FOF-TC.

Rule 25-24.520, Florida Administrative Code, provides the following:

(1) Each pay telephone service company shall file with the Commission's Division of Telecommunications updated information for the following items within ten days after a change occurs:

(a) The street address of the certificate holder including number, street name, city, state and zip code, and the mailing address if it differs from the street address.

(b) Name, title, and phone number of the individual responsible for contact with the Commission.

Order No. PSC-99-1174-FOF-TC found that Florida Coast Systems attempted to provide the updated information; however, the information was not filed in accordance with Rule 25-24.520, Florida Administrative Code, and the fine was appropriate.

Based on the foregoing, staff recommends that the Motion for Reconsideration should be denied because the company has failed to identify any fact that the Commission overlooked, or any point of law upon which the Commission erred in rendering its decision.

ISSUE 2: Should the Commission accept the settlement offer proposed by Florida Coast System to resolve the apparent violation of Rule 25-24.520, Florida Administrative Code, Reporting Requirements?

RECOMMENDATION: Yes, the Commission should accept Florida Coast Systems, Inc.'s settlement proposal. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. If the company fails to pay in accordance with the terms of the Commission Order, the company's certificate should be canceled with an effective date of December 31, 1998. **(WATTS)**

STAFF ANALYSIS: On June 25, 1999, Florida Coast Systems, Inc. offered a \$100 settlement for disposition of the pending fine for apparent violation of the reporting requirements rule.

Staff believes the settlement offer of Florida Coast System, Inc. will remedy the apparent violation and serve as a reminder that strict compliance with the rules is important to the Commission's continued effective and efficient regulation of public utilities. Accordingly, staff believes the Commission should accept Florida Coast Systems, Inc.'s settlement proposal. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. If the company fails to pay in accordance with the terms of the Commission Order, the company's certificate should be canceled with an effective date of December 31, 1998.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission approves staff's recommendation in Issues 1 and 2, this docket should be closed upon receipt of the \$100 contribution or cancellation of the certificate. **(WATTS)**

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issues 1 and 2, this docket should be closed upon receipt of the \$100 contribution or cancellation of the certificate.