

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against ETS Payphones of Florida, Inc. for apparent violation of Rule 25-24.515, F.A.C., Pay Telephone Service.

DOCKET NO. 010180-TC
ORDER NO. PSC-01-1232-AS-TC
ISSUED: June 1, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER APPROVING SETTLEMENT

BY THE COMMISSION:

ETS Payphones of Florida, Inc. (ETS) obtained Certificate No. 4238 on September 15, 1995, to provide pay telephone service. Staff performed service evaluations of four pay telephone stations operated by ETS; two on October 30, 2000, and two on November 1, 2000. Through written correspondence, our staff notified ETS of the apparent violations. ETS subsequently submitted a Service Violation Correction Form indicating that the violations cited in the aforementioned evaluations have been corrected. Our staff performed a second evaluation of the same four pay telephone stations on December 18 and 19, 2000. Three of the pay telephones did not have a legible and correct telephone number, the correct address of the pay telephone location, and the certificate number of the provider displayed as required by Rule 25-24.515(9)(a), Florida Administrative Code. In addition, one of the three pay telephone stations did not have the proper directory. These apparent rule violations were still present during the second evaluation. Hence, ETS is apparently in violation of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service. We opened this docket to initiate show cause proceedings against ETS.

DOCUMENT NUMBER-DATE

06900 JUN-16

FPSC-RECORDS/REPORTING

On November 14, 2000, we received notification that ETS has filed for relief under Chapter 11 of the United States Bankruptcy Code. The filing of a bankruptcy petition under Chapter 11 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Section 362(b)(5) provides that, for governments, the filing of a petition does not operate as a stay "of enforcement of a judgement, other than a money judgement, obtained in an actual proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." (emphasis added) Thus, it would appear that we are not enjoined from exercising our police powers to protect public health, safety and welfare, but are enjoined from exercising our regulatory authority to collect a debt or engage in other economic regulation. We are not seeking to collect a debt or engage in economic regulation. In this case, the show cause proceedings are for the apparent violation of service rules which are established to protect the public health, safety and welfare. Pursuant to Rule 25-24.514, Florida Administrative Code, this Commission may cancel a company's certificate for violation of Commission rules.

ETS has voluntarily offered a monetary settlement in lieu of continuing with the show cause proceedings which could result in the cancellation of its certificate. In a letter received on March 22, 2001, ETS proposed a settlement offer and included a waiver of objection to the administrative cancellation of the company's certificate in the event the settlement proposal is accepted and the company ultimately fails to comply with the terms of its offer. In its settlement proposal, ETS offered to:

- Conduct an investigation of all its Florida payphones to assure compliance with the [rules of] the Commission.
- Make a voluntary contribution of \$200 per violation for a total of \$800 to the State of Florida General Revenue Fund.

We believe that the terms of the settlement agreement represent a fair and reasonable resolution of this matter. Accordingly, we hereby accept the settlement offer. ETS must comply with these requirements within ten business days from the date this Order becomes final. The contribution should be identified with the

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docket number and the company name. Upon timely receipt, the contribution will be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. ETS has waived any objection to the administrative cancellation of its certificate if it does not comply with its settlement agreement. Upon remittance of the \$800 contribution or cancellation of the certificate, this docket shall be closed. We are vested with jurisdiction over this matter pursuant to Sections 364.3375 and 364.285, Florida Statutes.

Based on the foregoing, it is

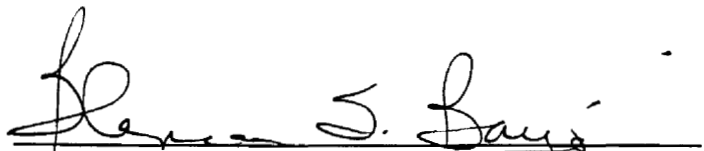
ORDERED by the Florida Public Service Commission that ETS Payphones of Florida, Inc.'s settlement proposal set forth in the body of this Order is hereby approved. It is further

ORDERED that this docket shall remain open pending receipt of the \$800 contribution. The contribution will be transmitted to the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that if ETS Payphones of Florida, Inc. fails to comply with this Order, its certificate will be canceled administratively. It is further

ORDERED that upon receipt of the \$800 contribution or cancellation of the certificate this docket shall be closed.

By ORDER of the Florida Public Service Commission this 1st day of June, 2001.


BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/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 after the issuance 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.