

State of Florida



Public Service Commission

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COMMISSION
CLERK

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DATE: APRIL 3, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK AND
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS AND ENFORCEMENT (MCCOY) *mm*
OFFICE OF GENERAL COUNSEL (CHRISTENSEN) *PAC 2.24.* *WJ*

RE: DOCKET NO. 020468-TC - APPLICATION FOR CERTIFICATE TO
PROVIDE PAY TELEPHONE SERVICE BY EQUITY PAY TELEPHONE CO.,
INC., AND PETITION FOR WAIVER OF PROVISIONS OF RULE 25-
24.511(5), F.A.C., WHICH DISALLOWS REINSTATEMENT OF
INVOLUNTARILY CANCELED CERTIFICATE.

AGENDA: 04/15/03 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020468.RCM

CASE BACKGROUND

By Order No. PSC-97-0066-FOF-TC, the Commission granted Pay Telephone Certificate No. 5073 to Equity Pay Telephone Co., Inc., (Equity) effective February 11, 1997.

A 2000 Regulatory Assessment Fee (RAF) notice was sent to Equity and the RAF was due January 30, 2001. When full payment had not been received by the due date, Docket No. 010686-TC was opened for violation of Rule 25-4.0161, Florida Administrative Code, and Section 364.336, Florida Statutes. By Order No. PSC-01-1890-PAA-TC, issued September 21, 2001, (consummated by Order PSC-01-2086-CO-TC, issued October 19, 2001), in Docket No. 010686-TC, Equity was fined \$500 and ordered to pay the RAF along with

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statutory penalty and interest charges for failure to comply with Rule No. 25-4.0161, Florida Administrative Code, and Section 364.336, Florida Statutes. Further, Equity was subject to cancellation of its certificate if the fine and past due RAF and penalty and interest were not received within 5 days of the issuance date of the consummating order. On October 18, 2001, the Commission received a \$50 check for the past due RAF. However, the company failed to pay the fine amount and the penalty and interest within 5 business days of the issuance of the consummating order on October 19, 2001. Therefore, the certificate was cancelled effective October 19, 2001.

On November 16, 2001, Equity sent a letter that requested its certificate be reinstated and provided a \$100 check as a settlement offer. The settlement check of \$100 was deposited by the Commission on November 26, 2001. In addition, Equity submitted a second application for a pay telephone certificate, along with the \$100 application fee, and a petition requesting a Chapter 120 waiver of Rule 25-24.511(5), Florida Administrative Code.

The Commission may grant a pay telephone company an exemption of certain portions of Chapter 364, Florida Statutes. By letter sent to the company January 17, 2002, the Company was advised to file a petition consistent with Chapter 120; however, upon further review of Section 364.3375, Florida Statutes, staff believed a Chapter 120 petition was unnecessary. The appropriate mechanism whereby a pay phone company may request a new certificate, after the company's certificate has been previously cancelled, is by filing a petition for exemption from Rule 25-24.511(5), Florida Administrative Code. Therefore, staff contacted Equity's owner, Mr. Robert Furlong, and requested that he file a petition for exemption from Rule 25-24.511(5), Florida Administrative Code.

On November 8, 2002, Equity filed its Petition for Exemption from Rule 25-24.511(5), Florida Administrative Code. Equity also submitted a letter withdrawing its Chapter 120 petition filed on May 10, 2002. In addition, the company also sent in \$400, the balance due on the fine imposed by Order No. PSC-01-1890-PAA-TC and consummated by Order No. PSC-01-2086-CO-TC.

Until April 1, 2003, Equity had not paid the associated penalties and interest due on the 2000 RAFs.

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The Commission has jurisdiction to consider this matter pursuant to Sections 364.3375 and 364.335, Florida Statutes. This recommendation addresses Equity's Request for Exemption from Rule 25-24.511(5), Florida Administrative Code, and its application for a certificate of public necessity and convenience for pay telephone service.

DISCUSSION OF ISSUES

ISSUE 1: Should Equity Pay Telephone Co., Inc.'s Petition for Exemption from Rule 25-24.511(5), Florida Administrative Code, be granted?

RECOMMENDATION: Yes. Staff believes that Equity Pay Telephone Co., Inc.'s petition for Exemption from Rule 25-24.511(5), Florida Administrative Code, should be granted. **(McCoy, Christensen)**

STAFF ANALYSIS: As noted in the Case Background, Equity Pay Telephone Co., Inc. (Equity) was sent a 2000 RAF notice and failed to pay its 2000 RAF. Due to its failure to timely pay its RAF, pursuant to Order No. PSC-01-1890-PAA-TC and consummated by Order No. PSC-01-2086-CO-TC, Equity's certificate to provide pay telephone service was cancelled.

As noted previously, on November 26, 2001, Equity submitted a second application to provided pay telephone service. Along with the application, Equity submitted a petition for Chapter 120 waiver of Rule 25-24.511(5), Florida Administrative Code. Rule 25-24.511(5), Florida Statutes, states that "[a] new certificate will not be granted to any applicant who has previously had a certificate involuntarily cancelled."

Upon further review, it was determined that a Chapter 120 waiver was unnecessary because Section 364.3375, Florida Statutes, permits the Commission, in granting a certificate, to exempt a pay telephone provider from some or all of the requirements of Chapter 364 if the action is consistent with the public interest and the exemption is in the public interest. Therefore, staff requested that the company file a petition for exemption from the rule in accordance with Section 364.3375, Florida Statutes. Equity filed its Petition for Exemption from Rule 25-24.511(5), Florida Administrative Code, and submitted a letter withdrawing its Chapter 120 petition filed on May 10, 2002.

Equity's Petition

In its Petition, Equity states that on January 21, 1997, it was granted a certificate of public convenience and necessity to provide pay telephone service. Equity notes that its Certificate No. 5073 was involuntarily cancelled for failure to file a RAF form timely. Equity asserts that although RAF payments were made late, the payment was made prior to cancellation, and cancellation was solely due to a failure to file the required written response in regards to its RAF.

Equity cites to Section 364.3375(1)(b), Florida Statutes, which authorizes the Commission to exempt a pay telephone provider from all or some of the requirements of Chapter 364, if the Commission determines that the exemption is in the public interest. Equity states that the Commission is authorized to grant an exemption to a pay telephone provider from Rule 25-24.511(5), Florida Administrative Code, if the Commission determines that granting the exemption is in the public interest.

Equity states that it has submitted a new application. Equity asserts that the company promises that if a new certificate is granted, all future RAFs will be paid in a timely manner. Equity also states that the company has hired a Chief Financial Officer who is responsible for such filings that were previously handled by third parties. Equity contends that the company had paid all RAFs prior to the cancellation, and the cancellation was simply an administrative issue pertaining to the non-receipt through the mail of the required written response.

Equity asserts that the company believes it is in the public interest to grant it an exemption from Rule 25-24.511(5), Florida Administrative Code, and approve its new application for certificate or reinstate Order No. PSC-97-0066-FOF-TC, in which Pay Telephone Certificate No. 5073 was granted. Equity states that if Certificate No. 5073 is reinstated, it would save the company the financial hardship of ordering new certificate plates for its phone.

Analysis

Staff has investigated the reason that Equity failed to timely file its 2000 RAF. It appears that Equity's owner, Mr. Furlong, and Equity's third party accounting firm assumed that the other person had completed and submitted to the Commission the 2000 RAF form and fees. Instead, neither person submitted the RAF form or payment. While staff believes that these events do not excuse the company from its obligation to timely remit RAFs and the annual RAF report form, staff believes that the company has taken steps to prevent such oversight in the future by assigning these duties to an in-house person.

While Equity paid its \$50 RAF prior to the consummating order being issued, the fine was not paid, nor had staff received a written settlement offer. However, the company did attempt to settle the matter. Further, staff believes that it was an inadvertent mistake that Equity filed its RAF form and its settlement late.

Staff believes that the petitioner has demonstrated that granting the petition would be in the public interest. Specifically, the company has paid all past due RAFs, including penalties and interest, and the fine imposed by Order No. PSC-01-1890-PAA-TC and consumated by Order No. PSC-01-2086-CO-TC. In addition, the company promises to timely pay all future RAFs and has taken steps to ensure that there are no future late RAF payments or forms. Therefore, staff recommends that the petition for exemption from Rule 25-24.511(5), Florida Administrative Code, should be granted in this case.

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ISSUE 2: Should the Commission grant Equity Pay Telephone Co., Inc.'s application for certificate of public necessity and convenience for pay telephone service?

RECOMMENDATION: Yes, staff recommends that Equity Pay Telephone Co., Inc.'s application for a certificate of public necessity and convenience to provide pay telephone service should be granted. (McCoy, Christensen)

STAFF ANALYSIS: As noted in the previous issue, on November 26, 2001, Equity submitted a second application to provided pay telephone service. On November 8, 2002, Equity filed its Petition for Exemption from Rule 25-24.511(5), Florida Administrative Code. In Issue 1, staff recommends that Equity's Petition for Exemption from Rule 25-24.511(5), Florida Administrative Code, which prevents Equity from being granted a new certificate because of its previous involuntary cancellation, be granted.

After review of Equity's second application for a certificate to provide pay telephone service and its Petition for Exemption, staff believes that it is in the public interest to grant Equity's application. Since Equity's previous certificate was cancelled, staff believes that a new certificate should be issued rather than reinstating the old certificate.

Staff notes that Pay Telephone Service (PATS) providers are subject to Chapter 25-24, Florida Administrative Code, Part XI, Rules Governing Pay Telephone Service Provided by Other Than Local Exchange Telephone Companies. PATS providers are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapter 25-4, Florida Administrative Code.

In addition, under Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee (RAF) of \$50 if the certificate was active during any portion of the calendar year. A RAF Return notice will be mailed each December to Equity for payment by January 30th. Neither the cancellation of the certificate nor the failure to receive a RAF Return notice shall relieve Equity from its obligation to pay the RAFs.

Therefore, staff recommends that Equity Pay Telephone Co., Inc.'s second Application for a certificate of public necessity and convenience to provide pay telephone service should be granted.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission approves or denies staff's recommendation on Issues 1 and 2, this docket should be closed, upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action order. (McCoy, Christensen)

STAFF ANALYSIS: Whether staff's recommendation on Issues 1 and 2 is approved or denied, the result will be a proposed agency action order. This docket should be closed, upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action.