

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
certificate to provide pay
telephone service by Equity Pay
Telephone Co., Inc., and
petition for exemption from Rule
25-24.511(5), F.A.C.

DOCKET NO. 020468-TC
ORDER NO. PSC-03-0577-PAA-TC
ISSUED: May 6, 2003

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER GRANTING EXEMPTION TO RULE 25-24.511(5), FLORIDA
ADMINISTRATIVE CODE, AND APPROVING APPLICATION TO PROVIDE PAY
TELEPHONE SERVICE FOR EQUITY PAY TELEPHONE CO., INC.

BY THE COMMISSION:

BACKGROUND

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

A notice for 2000 Regulatory Assessment Fee (RAF) 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, in Docket No. 010686-TC¹, Equity was fined \$500 and ordered to pay the RAF along with statutory penalty

¹Consummated by Order PSC-01-2086-CO-TC, issued October 19, 2001.

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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, we 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 us 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.

We 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, our 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, our 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 (consummated by Order No. PSC-01-2086-CO-TC). However, until April 1, 2003, Equity had not paid the associated penalties and interest due on the 2000 RAFs.

We have jurisdiction to consider this matter pursuant to Sections 364.3375 and 364.335, Florida Statutes. This order 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.

PETITION FOR EXEMPTION FROM RULE 25-24.511(5),
FLORIDA ADMINISTRATIVE CODE

As noted above, 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, 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 this 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, our 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 this Commission to exempt a pay telephone provider from all or some of the requirements of Chapter 364, if this Commission determines that the exemption is in the public interest. Equity states that this Commission is authorized to grant an exemption to a pay telephone provider from Rule 25-24.511(5), Florida Administrative Code, if this 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.

Decision

We have 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 us the 2000 RAF form and fees. Instead, neither person submitted the RAF form or payment. While we find that these events do not excuse the company from its obligation to timely remit RAFs and the annual RAF report form, we also find 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 we received a written settlement offer. However, the company did attempt to settle the matter. Thus, we conclude that it was an inadvertent mistake that Equity filed its RAF form and its settlement late.

Therefore, we find that Equity has demonstrated that granting its petition is 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 (consummated 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, Equity's Petition for Exemption from Rule 25-24.511(5), Florida Administrative Code, shall be granted in this case.

APPLICATION

As noted in the previous section, 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 the previous section, we found 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, should be granted.

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

We note 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

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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, Equity Pay Telephone Co., Inc.'s second Application for a certificate of public necessity and convenience to provide pay telephone service shall be granted. Equity Pay Telephone Co., Inc. shall be granted Certificate No. 8348.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Equity Pay Telephone Co., Inc.'s Petition for Exemption from Rule 25-24.511(5), Florida Administrative Code, is hereby granted in this case. It is further

ORDERED that we hereby grant Certificate No. 8348 to Equity Pay Telephone Co., Inc., which shall authorize it to provide Pay Telephone services, subject to the terms and conditions specified in the body of this Order. It is further

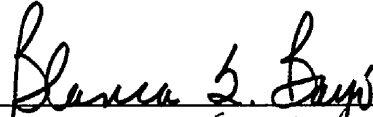
ORDERED that this Order shall serve as Equity Pay Telephone Co., Inc.'s certificate and should be retained by Holiday Travel Park Co-Op, Inc as proof of certification. It is further

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 Director, Division of the Commission Clerk and Administrative Services, 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

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ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 6th Day of May, 2003.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

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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 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.

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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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 27, 2003.

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.