

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause ) DOCKET NO. 921250-TI  
proceedings against CHERRY ) ORDER NO. PSC-93-0805-PCO-TI  
PAYMENT SYSTEMS, INC. d/b/a ) ISSUED: May 25, 1993  
CHERRY COMMUNICATIONS for )  
violation of Rule 25-4.118, )  
F.A.C., Interexchange Carrier )  
Selection. )  
\_\_\_\_\_ )

ORDER DENYING MOTION FOR RECONSIDERATION

On May 17, 1993, pursuant to Rules 25-22.038(2) and 25-22.060, Florida Administrative Code, Cherry Payment Systems, d/b/a Cherry Communications (Cherry or the Company) filed a Motion for Reconsideration of Order Establishing Preliminary Issues for Hearing and to Strike Issue Numbers 1, 4, 6, and 7 (Motion). The Order in question is PSC-93-0695-PCO-TI, issued in this docket on May 6, 1993.

Initially, I note that the two Rules cited by the Company as authority to file its instant Motion yield different avenues of review. The first produces a review by the Prehearing Officer while the second results in a review by the full panel assigned to the case. As the Order at issue is a prehearing matter, Rule 25-22.038(2) is the more specific and thus, more appropriate authority. I shall address the Company's Motion pursuant to that Rule.

The Company has requested that this Motion be held for argument at the May 27, 1993, prehearing conference. This is equivalent to a request for oral argument. The decision whether or not to grant oral argument is discretionary. Upon review of the Motion, I find that the Company has failed to demonstrate how oral argument will aid my comprehension or evaluation of this matter. Thus, I shall make my decision at this time based on the pleading which is before me.

In its Motion, the Company argues that this proceeding was initiated pursuant to the Order to Show Cause issued on February 22, 1993, (PSC-93-0269-FOF-TI) and that the sole basis of the Order to Show Cause is the alleged violation of Rule 25-4.118, Florida Administrative Code. The Company contends that, pursuant to Rule 25-22.036(7)(a)(4), Florida Administrative Code, the scope of the instant show cause proceeding, as set forth in the Order Establishing Preliminary Issues for Hearing, has been inappropriately expanded beyond the violation of Rule 25-4.118, alleged in the Order to Show Cause.

DOCUMENT NUMBER-DATE

05668 MAY 25 83

FLORIDA PUBLIC SERVICE COMMISSION

In this regard, I note that Rule 25-22.036(7)(a), Florida Administrative Code, begins by excepting "orders or notices issued by the Commission" from the requirements set forth in that Rule. Because the Order to Show Cause was an order "issued by the Commission," the Company's interpretation of the Rule does not apply to the facts set forth in its Motion. Indeed, the addition of issues is clearly anticipated by Rule 25-22.038, Florida Administrative Code, which actually provides for adding issues, under some circumstances, after the Prehearing Order has been issued. Nonetheless, I shall examine the issues which the Company asserts are not appropriately included in the instant proceeding.

Regarding Issue 1, the Company argues that there is no allegation in the Order to Show Cause that Cherry has violated Rule 25-24.470(1), and that the issue is thus not appropriate for this proceeding. However, the Order to Show Cause states that: "Cherry received its certificate to provide interexchange telecommunications service on December 4, 1992. Prior to that date the Division of Communications received one complaint from a customer who stated that her service was switched to Cherry without her knowledge or authorization." (PSC-93-0269-FOF-TI, at 1).

Regarding Issue 4, the Company argues that there is no allegation in the Order to Show Cause that it failed to respond to staff inquiries in violation of Rule 25-4.043, Florida Administrative Code. However, the adequacy of Cherry's responses to staff inquiries was discussed in the Order to Show Cause. (PSC-93-0269-FOF-TI, at 1, 3).

Regarding Issue 6, Cherry asserts that the Order to Show Cause fails to set forth what rule or statute is violated regarding alleged "unethical marketing practices." However, the marketing practices of Cherry are called into question in the Order to Show Cause by reference to alleged forgery, false or misleading marketing techniques, and LOAs signed by minor children. Moreover, the issue of marketing practices dovetails with the unauthorized PIC change allegations to the extent that the marketing practices may give rise to such unauthorized changes.

Regarding Issue 7, the Company asserts that there is no allegation in the Order to Show Cause regarding the accuracy of Cherry's application. The Company also contends that there is no reference to what rule or statute it has violated in this context. However, Rule 25-24.474(1), Florida Administrative Code, which is cited in the Order to Show Cause provides that:

ORDER NO. PSC-93-0805-PCO-TI  
DOCKET NO. 921250-TI  
PAGE 3

The Commission may on its own motion cancel a company's certificate for any of the following reasons:

(a) Violation of the terms and conditions under which the authority was originally granted. . .

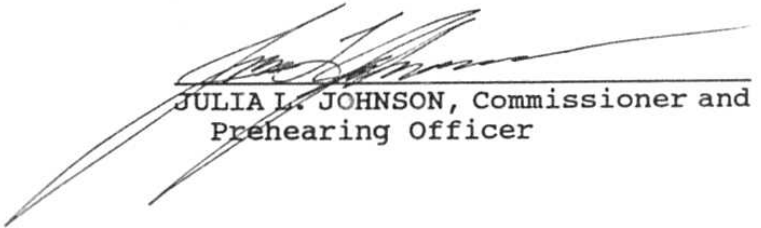
If it is established that the Company has submitted an inaccurate application for authority to provide service, it has violated the terms and conditions under which the authority was originally granted. Thus, inclusion of this issue is appropriate on the Commission's own motion.

In summation, the issues before the Commission appear to be reasonably anticipated by the Order to Show Cause. Moreover, the Company has cited no case law to support its instant Motion and the singular rule authority upon which the Company relies in its argument to strike the aforementioned issues is inapplicable to orders of the Commission.

Therefore, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that Cherry Payment Systems, d/b/a Cherry Communications' May 17, 1993, Motion for Reconsideration of Order Establishing Preliminary Issues for Hearing and to Strike Issue Numbers 1,4,6 and 7 is hereby denied.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 25th day of May, 1993.



JULIA L. JOHNSON, Commissioner and  
Prehearing Officer

( S E A L )

CWM

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.