

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 921250-TI
proceedings against CHERRY) ORDER NO. PSC-93-1561-FOF-TI
PAYMENT SYSTEMS, INC. d/b/a) ISSUED: 10/25/93
CHERRY COMMUNICATIONS for)
violation of Rule 25-4.118,)
F.A.C., inter-exchange carrier)
selection.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON

ORDER GRANTING STAY
AND
DENYING ORAL ARGUMENT ON RECONSIDERATION OF COMMISSION ORDER

BY THE COMMISSION:

By Order No. PSC-93-1374-FOF-TI, issued on September 20, 1993, we revoked the certificate of Cherry Communications, Inc. (Cherry or the Company) to provide interexchange service in Florida. On October 5, 1993, Cherry filed an Emergency Request for Stay Pending Reconsideration and Judicial Review (Request for Stay). The Company also filed a Motion for Reconsideration of the aforementioned Order which included a Request For Oral Argument (Request for Oral Argument).

STAY

Cherry filed its Request to Stay pursuant to Rule 25-22.061, Florida Administrative Code which sets forth the standards to be used in determining whether a stay should be granted. Among the considerations are "[w]hether the Petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted" and "whether the delay will cause substantial harm or be contrary to the public interest." Upon review, we find that the Company has demonstrated that, absent a stay, it will suffer irreparable harm because it will lose its customer base prior to reconsideration and possible judicial review of our decision. The Company argues that since it has ceased soliciting Florida Customers, the potential harm to the public is minimal. We agree that potential harm to the public can be limited during the stay by imposing conditions on the stay as allowed by Rule 25-22.061(2).

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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

In order to protect the public, the Company shall be prohibited from soliciting Floridians or submitting PIC changes for Floridians during the pendency of the stay. Failure of the Company to adequately respond to consumer complaints shall also be cause for the Commission to reevaluate the stay. With these conditions, we shall grant the Request for Stay. The duration of the stay shall be conditional on the timely filing of a motion of appeal. If a motion of appeal is not timely filed, the stay shall terminate automatically.

ORAL ARGUMENT

The Company requested Oral Argument on its Motion for Reconsideration.

Rule 25-22.058(1), Florida Administrative Code provides that:

(1) The Commission may grant oral argument upon request of any party to a section 120.57 formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Failure to file a timely request for oral argument shall constitute waiver thereof.

Cherry did not file a separate Request for Oral Argument. Rather, the Company simply stated in its Motion for Reconsideration that "Oral argument is requested on this motion." Thus, the Company failed to demonstrate how oral argument will "aid the Commission in comprehending and evaluating the issues before it." Therefore, the Company's Request for Oral Argument shall be denied.

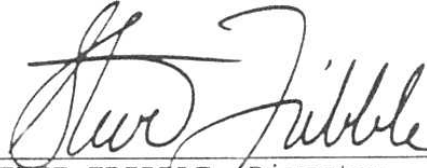
Therefore, it is

ORDERED by the Florida Public Service Commission that Cherry Communications, Inc.'s October 5, 1993, Request for Stay is granted with the conditions set forth in the body of this Order. It is further

ORDERED that the Company's Request for Oral Argument is denied.

ORDER NO. PSC-93-1561-FOF-TI
DOCKET NO. 921250-TI
PAGE 3

By ORDER of the Florida Public Service Commission, this 25th
day of October, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
CWM

NOTICE OF 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 the Commission's final action in this matter may request 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 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.