

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Pushbutton Paging & Communication, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records.

DOCKET NO. 000236-TX  
ORDER NO. PSC-00-1126-PCO-TX  
ISSUED: June 21, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.  
LILA A. JABER

ORDER REJECTING OFFER OF SETTLEMENT  
AND EXTENDING TIME FOR RESPONSE TO ORIGINAL  
ORDER TO SHOW CAUSE

BY THE COMMISSION:

On December 5, 1998, Push Button Paging & Communications, Inc. (Push Button Paging or the company) obtained Florida Public Service Commission Alternative Local Exchange Company Certificate Number 5727. Subsequently, on June 25, 1999, our staff mailed a certified letter to the company requesting information necessary for inclusion in the local competition report this Commission is required to submit pursuant to Section 364.386, Florida Statutes. Our staff requested a response by August 6, 1999. On July 7, 1999, Push Button Paging signed the return receipt for the certified letter. The company did not respond to the June 25, 1999, letter.

On December 6, 1999, our staff sent a second certified letter to the company requesting Push Button Paging's response to the data request no later than December 22, 1999. On December 8, 1999, Push Button Paging signed the return receipt for the second certified letter.

On February 22, 2000, after receiving no response to the June 25, 1999 and December 6, 1999 certified letters, Commission staff

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ORDER NO. PSC-00-1126-PCO-TX  
DOCKET NO. 000236-TX  
PAGE 2

opened this Docket to investigate whether Push Button Paging should be required to show cause why it should not be fined or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.

Thereafter, on April 10, 2000, we issued Order No. PSC-00-0666-SC-TX, requiring Push Button Paging to show cause why it should not be fined or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. On April 24, 2000, Push Button Paging submitted a response to our Order and an offer to settle this case.

In its response, Push Button Paging contends that it did send the requested information. The company has not, however, produced any documentation to support its claim. In its settlement offer, Push Button Paging proposes the following: 1) to pay a monetary settlement of \$100; and 2) to send future responses to requests for information by certified mail

Upon consideration, we find that the terms of the settlement offer are not acceptable. Although the company argues that the amount of the fine is too high for small businesses, that it effectively undermines small businesses' ability to compete with Local Exchange Companies, and that it will cause small businesses, including Push Button Paging, to go out of business, we believe that a settlement of \$100 is too low for the apparent violations at issue in this Docket. Two certified letters were sent to the company six months apart in an effort to obtain the information contained in company records for inclusion in the local competition report for the Legislature. It is imperative that we receive full participation to accurately reflect the status of local telecommunications competition to the Legislature and the Governor. Given that two attempts to obtain the information were made in which our staff emphasized the importance of the information to the Commission and the Legislature, we find that a higher settlement amount is warranted. Although the ALEC industry in Florida is subject to minimal regulation in Florida in an effort to foster competition consistent with Florida Statutes, we still expect compliance with the rules and statutes that are in place for ALECs. As such, the settlement proposal offered by Push Button Paging is hereby rejected.

Push Button Paging must, therefore, respond to the original show cause order, Order No. PSC-00-0666-SC-TX, within 21 days of the issuance of this Order denying the settlement proposal. If

ORDER NO. PSC-00-1126-PCO-TX  
DOCKET NO. 000236-TX  
PAGE 3

Push Button Paging fails to respond to the Order to Show Cause and the fine is not received within ten business days after the expiration of the additional show cause response period provided by this Order, then Certificate No. 5727 shall be canceled. If Push Button Paging's Certificate is canceled, or Push Button Paging pays the fine within ten business days after the expiration of the show cause response period, this docket shall be closed administratively.

It is, therefore,

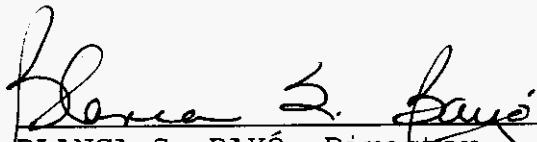
ORDERED by the Florida Public Service Commission that the settlement proposal offered by Push Button Paging & Communications, Inc. is hereby rejected. It is further

ORDERED that Push Button Paging & Communications, Inc. must respond to the original show cause order, Order No. PSC-00-0666-SC-TX, within 21 days of the issuance of this Order rejecting the settlement proposal. It is further

ORDERED that if Push Button Paging & Communications, Inc. fails to respond to the Order to Show Cause and the fine is not received within ten business days after the expiration of the additional show cause response period provided by this Order, then Certificate No. 5727 shall be canceled. It is further

ORDERED that if Push Button Paging & Communications, Inc.'s Certificate is canceled, or Push Button Paging & Communications, Inc. pays the fine within ten business days after the expiration of the show cause response period, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 21st day of June, 2000.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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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.

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.

This order is procedural in nature. Any person whose substantial interests are affected by this order rejecting the settlement proposal and extending the time for response to the show cause order may file a response within 21 days of issuance of this order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 12, 2000.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.