

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Maria E. Delgado d/b/a Global Communication for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 000482-TC  
ORDER NO. PSC-01-1670-FOF-TC  
ISSUED: August 15, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

FINAL ORDER DENYING REQUEST FOR HEARING,  
REJECTING SETTLEMENT OFFER, AND CANCELING CERTIFICATE

I. CASE BACKGROUND

On November 4, 1994, Maria E. Delgado d/b/a Global Communication (Global) obtained Florida Public Service Commission Pay Telephone Service (PATS) Certificate No. 3874. On January 27, 2000, April 17, 2000, our staff attempted to contact Global via telephone, regular mail and certified mail to inform it of pay telephone rule violations found in Tampa, Florida, and New Port Richey, Florida. Our staff received the signed return receipt from the certified letter it sent, but no response was received from the company.

On April 24, 2000, our staff opened this docket to investigate whether Global should be ordered to show cause why it should not be fined or have its certificate canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. On June 30, 2000, we issued Order No. PSC-00-1180-SC-TC, ordering Global to show cause why it should not be fined \$10,000 or have its certificate canceled. Thereafter, on January 26, 2001, Global submitted an offer of \$100 to settle this case. We rejected Global's offer, and issued Order No. PSC-01-

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1016-PCO-TC on April 3, 2001, ordering Global to respond to the original show cause order.

On April 30, 2001, Global submitted a response to Order No. PSC-01-1016-PCO-TC and Show Cause Order No. PSC-00-1180-SC-TC. Thereafter, on May 29, 2001, Global submitted a supplemental response to Order No. PSC-01-1016-PCO-TC and Show Cause Order No. PSC-00-1180-SC-TC.

We are vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285 and 364.3375, Florida Statutes.

## II. DISCUSSION OF ISSUES

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Our staff first contacted Global concerning service deficiencies on January 27, 2000, with a response due on February 11, 2000. According to records submitted by Global in its defense and call records subpoenaed by our staff from MCI WorldCom (MCI), it appears Global did not try to contact staff in response until April 20, 2000, over two months later.

On October 17, 2000, we declined to vote on this matter, deferring it to give Global additional time to obtain phone records to support its claim that it faxed its response to staff's letters on March 7. Global was unable to obtain the call records, so on December 18, 2000, our staff issued a subpoena to MCI to request the March 2000 call records for all numbers from the location from which Global claims it faxed responses to our staff regarding the pay telephone rule violation notifications. On January 17, 2001, MCI submitted its response to the subpoena. The call records did not contain any calls from that location to us during March 2000.

At the April 3, 2001, Agenda Conference, we rejected Global's settlement offer of \$100 and ordered Global to respond to the original Order to Show Cause, (SC-00-1180-SC-TC, dated June 30, 2000. In Global's April 30, 2001, response, Global maintained that it should not be fined and reiterated its previous offer of \$100.

When our staff informed Global that it would not support Global's April 30, 2001, offer because we had previously rejected an identical offer, Global submitted a supplemental response in which it offered a settlement of \$250. We believe the terms of the settlement offer are not acceptable. Our staff did advise Ms. Delgado of Global that, in a similar case where mitigating factors were presented by the company, we have accepted a \$1,000 settlement offer. Our staff also advised Ms. Delgado that it would recommend that we accept a \$1,000 settlement in this case. Ms. Delgado declined to offer a \$1,000 settlement. We believe that a contribution of not less than \$1,000 is warranted to settle this docket for purposes of maintaining consistency in dealing with matters involving similar circumstances.

Our staff's initial recommendation of a \$10,000 fine is consistent with previous decisions in Docket Nos. 992030-TI, Initiation of show cause proceedings against U.S. Operators, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries, and 981375-TC, Cancellation by Florida Public Service Commission of Pay Telephone Certificate No. 5041 issued to Pay-Tel Services Inc. for violation of Rules 25-24.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, and 25-4.043, F.A.C., Response to Commission Staff Inquiries. In these dockets, we accepted contributions of \$2,500 as settlement for the apparent violation of Rule 25-4.043, Florida Administrative Code. Global's position is that it has done nothing wrong and a fine of \$10,000 is excessive. It has offered \$250, which it deems a reasonable amount given the circumstances. In Docket No. 000215-TX, Initiation of show cause proceedings against Smart City Networks for apparent violation of Section 364.183(1), F.S., Access to Company Records, our staff sent two certified letters to the company requesting access to its records, but only received a return receipt for the first letter sent. There, staff had initially recommended a fine of \$10,000, and the company offered a voluntary contribution of \$1,000 to settle the case. The company argued that the fact that staff only had one of the return receipts

and therefore no proof that the company had received the second certified letter was a mitigating factor. We agreed and accepted the company's offer of \$1,000. In other dockets with the same apparent violation, we accepted higher settlement offers from other companies that did not present evidence of mitigating factors.

Documentation submitted with Global's initial settlement offer contained phone records that indicate Global attempted to contact staff by telephone on April 20, 2001, four days before the docket was opened. We believe that Global's proof that it did try to contact staff before this docket was opened is a mitigating factor in the company's favor, but that an offer of \$250 is unacceptable.

Order No. PSC-01-1016-PCO-TC, dated April 24, 2001, ordered Global to respond to the original show cause order within 21 days of the issuance of the Order denying the settlement. It further ordered that if Global failed to respond to Order No. PSC-00-1180-SC-TC and the fine was not received within ten business days after the expiration of the show cause response period, then Certificate No. 3874 would be canceled and this docket would be closed administratively.

The response received on April 30, 2001, though timely, did not present allegations of fact and law and did not request a hearing. It simply asked that the Commission review Global's previous offer of \$100. Our staff attempted to contact Global on May 10, 2001, to seek clarification of its April 30, 2001, response to Order No. PSC-01-1016-PCO-TC. It appeared, however, that Ms. Delgado was out of the country and no other company representatives would be available until after the 21-day show cause response period had expired on May 15, 2001.

Global did contacted our staff by telephone on May 21, 2001, at which time our staff informed Global that it would not support Global's April 30, 2001, offer since the Commission had already rejected that offer in Order No. PSC-00-1180-SC-TC. Since it was not clear whether the company intended to request a hearing, our staff then requested that Global provide clarification of its April 30, 2001, letter by May 29, 2001, the end of the 10 business day fine payment period following the 21-day show cause response period. Our staff explained at length what the company's options

were, the consequences of each, and what procedures it should follow in each case based on its decision.

As previously stated, Global did submit a supplemental response to Order No. PSC-01-1016-PCO-TC. This response, however, did not indicate that it was a clarification of the April 30, 2001, response, but offered a new settlement of \$250 and, if that offer was not accepted by the Commission, requested a hearing. The supplemental response was untimely as to its request for a hearing in that it was neither offered as a clarification of the timely response nor filed within 21 days of the April 24, 2001, Order denying the settlement. Neither response contains specific allegations of fact and law, as required by the original show cause order.

We emphasize that we believe our Orders issued in this Docket have given adequate instruction and opportunity to respond. The company was given additional time to present evidence to support its claim that it sent its response from the Kash-N-Karry Headquarters in Tampa, Florida, on March 7, 2000. When the company was unable to access the Kash-N-Karry call records needed to prove that it had responded as it claimed, our staff subpoenaed the records from Kash-N-Karry's long distance provider on Global's behalf. Our staff scrutinized the records to see if Global may have mis-dialed by a digit or perhaps used Tallahassee's previous area code. Their analysis revealed that no calls were placed to the Commission, nor to a number off by one digit from a Commission number, nor to a Commission number with the old "904" area code, during the entire month of March 2000.

### III. CONCLUSION

Global has been given ample opportunity to prove that it responded to our staff's original inquiries in a timely manner, which it did not do, provide an acceptable settlement offer, which it refuses to do, or request a hearing within the proper time periods, which it did not do. Accordingly, we deny Global a hearing in this docket based on its April 30, 2001, and May 29, 2001, responses to Order No. PSC-01-1016-PCO-TC, issued April 24, 2001. At the Agenda Conference of July 24, 2001, Global was afforded the opportunity to argue its position. Nothing offered by Global demonstrated any further mitigation. We directed our

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staff to work with Global on the acceptance of a \$1000.00 settlement, and if an agreement could not be reached, then certificate No. 3874 should be cancelled. Since July 24, 2001, our staff has placed several calls and left several messages with Global, in an effort to reach agreement on the \$1000.00 fine and the terms of payment. None of their calls have been returned. Wherefore, our staff has not been able to reach a settlement agreement for \$1000.00 with Global, certificate No. 3874 shall be cancelled, and the docket closed.

Based on the foregoing, it is

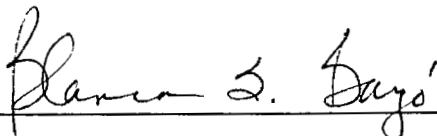
ORDERED that the settlement offer of Maria E. Delgado d/b/a Global Communication is rejected. It is further

ORDERED that the request by Maria E. Delgado d/b/a Global Communication for a hearing is denied as being untimely. It is further

ORDERED that PATS Certificate No. 3874 is cancelled. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 15th Day of August, 2001.



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

( S E A L )

WDK

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.