

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of) DOCKET NO. 920231-TC
Rule 25-24.515(11), F.A.C.,) ORDER NO. PSC-92-0362-FOF-TC
Current Directory Requirement,) ISSUED: 05/14/92
by EASTERN PAY PHONES, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION ORDER DENYING
PETITION FOR RULE WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Eastern Pay Phones, Inc. (Eastern) has been a certificated pay telephone service (PATS) provider since October 11, 1990. As a certificated PATS provider, Eastern is subject to our jurisdiction.

On September 9, 1991, service evaluations were performed on pay telephones operated by Eastern at the Sawgrass Mills Mall in Sunrise, Florida. On December 6, 1991 a letter was sent to Eastern advising the company that directories were not in place at its pay telephone locations at the Sawgrass Mills Mall.

On December 31, 1991 Eastern responded and requested a waiver of Rule 25-24.515(11) which requires that a directory be in place at each station where there are fewer than three instruments located in a group and that a directory be in place at every other station where there are three or more telephones located in a group.

In its response, Eastern explained that it installed pay stations without directories because of contractual time constraints and lack of available directory equipped stations from its chosen supplier. The company also stated its intention to install directories at 29 stations by January 29, 1992. However, diagrams supplied by the company shows that 19 more pay stations require directories to be in compliance with Rule 25-24.515(11).

Eastern's request for a waiver of Rule 25-24.515(11) is premised on the assertion that the cost of compliance outweighs any

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potential benefit. The company asserts that it has satisfied the intent of the Rule and that any additional increased convenience is minimal.

As a general principle, waiver of a rule is appropriate where compliance with the rule would be contrary to the public interest. Waiver of a rule should be limited to a particular circumstance, situation or scenario. We are especially concerned when the request for a waiver is filed after the fact. In the instant case, we believe that Eastern has failed to meet its burden in requesting the waiver. The company has amply demonstrated it will benefit from the proposed waiver but has failed to adequately demonstrate any benefit to the rate paying public. The company does not assert any effort was made to seek alternative suppliers or solutions. To grant an after the fact waiver for the sake of commercial expediency would either give Eastern an unfair competitive advantage or invite an avalanche of waivers sufficient to undermine the rule.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Eastern Pay Phones, Inc.'s request for a waiver of Rule 25-24.515(11), Florida Administrative Code is hereby denied. It is further

ORDERED that Eastern Pay Phones, Inc. shall bring its pay telephone stations into compliance with Rule 25-24.515(11) and provide written notice of such compliance. It is further

ORDERED that any protest of this Order shall be filed pursuant to the requirements. It forth below. It is further

ORDERED that if no protest is timely filed, this docket shall be closed within 14 days of receipt of the written notice of compliance.

By ORDER of the Florida Public Service Commission, this 14th day of May, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

by: Kay Flynn
Chief, Bureau of Records

JKA

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 4, 1992.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an 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. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.