

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into) DOCKET NO. 911053-TP
the payment of commissions by) ORDER NO. PSC-92-0874-FOF-TP
telephone companies.) ISSUED: 08/25/92
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_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER CONCLUDING INVESTIGATION AND CLOSING DOCKET

BY THE COMMISSION:

During an agenda conference some time ago, we opened an investigation into the question of whether commission payments from pay telephone providers are legal. After extensive research on the question, we have concluded that, as a general matter, such payments are legal. We have found no provision of Florida or federal law that would prohibit commission payments for the placement of pay telephones, or for other services. In fact, commission payments may even be a necessity in today's pay telephone market. Many public pay telephones are located on privately owned property. Commission payments compensate the property owner for the privilege of placing an instrument at a given location. A property owner has no obligation to allow an instrument to be placed on his property. Without some form of compensation being offered, it is doubtful that pay telephones could be placed in all of the areas where they are presently located.

In exploring this question, we have sought input from pay telephone providers, local exchange companies, and interexchange carriers. Those questioned all agreed that, as a general rule, commission payments are both legal and necessary in the pay telephone market. The only other point raised was that certain practices involving commission payments could be illegal, or raise serious policy concerns, such as predatory pricing or other anticompetitive behavior. However, we believe that any disputes over company practices in the payment of commissions should be dealt with, as needed, on a case-by-case basis. Although the investigation in this docket focused on the issue of pay telephone

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commissions, we believe the same analysis would apply for any other type of commission payment.

For the reasons set forth above, we find it appropriate to close this docket. We note that this action will render moot the motion filed on November 13, 1991, by GTE Florida Incorporated, as well as the response thereto filed on November 25, 1991, by the Florida Pay Telephone Association, Inc.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this docket shall be closed for the reasons set forth herein.

By ORDER of the Florida Public Service Commission this 25th day of August, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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by: Kay Flynn
Chief, Bureau of Records

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.

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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 Records and Reporting 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 or sewer 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.