

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause ) DOCKET NO. 921250-TI  
proceedings against Cherry ) ORDER NO. PSC-95-1187-AS-TI  
Payment Systems, Inc. d/b/a ) ISSUED: September 21, 1995  
Cherry Communications for )  
violation of Rule 25-4.118, )  
F.A.C., Interexchange Carrier )  
Selection. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

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

ORDER ACCEPTING SETTLEMENT

BY THE COMMISSION:

I. BACKGROUND

The instant proceeding was initiated on December 11, 1992, to address complaints filed against Cherry Payment Systems, Inc. d/b/a Cherry Communications (Cherry or the Company), regarding the unauthorized switching of consumers from their preselected long-distance carrier to Cherry. The practice of unauthorized switching of consumers is known as "slamming." On February 22, 1993, we issued Order No. PSC-93-0269-FOF-TI requiring Cherry to show cause why it should not be fined or have its certificate revoked for violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection. The Company timely responded and this matter was set for hearing.

A hearing was held on June 18, 1993. As a result of the hearing, we issued Order PSC-93-1374-FOF-TI revoking Cherry's certificate. On October 5, 1993, Cherry filed a Motion for Reconsideration of the Order and an Emergency Request for Stay pending reconsideration and judicial review. By Order No. PSC-93-1561-FOF-TI, issued on October 25, 1993, we granted the Company's Request for Stay. As a condition of the stay, the Company was prohibited from soliciting or submitting PIC changes in Florida during the pendency of the stay.

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FFSC-REGULATORY REPORTING

By Order PSC-94-0115-FOF-TI, issued January 31, 1994, we denied Cherry's Motion for Reconsideration. On February 28, 1994, Cherry filed its Notice of Administrative Appeal to the Florida Supreme Court, challenging Orders PSC-93-1374-FOF-TI, PSC-93-1374A-FOF-TI, and PSC-94-0115-FOF-TI. On February 25, 1995, the Florida Supreme Court issued its decision vacating the Orders under review and remanding the case for a new hearing consistent with the Courts determination that Cherry's rights were violated under the due process clause of state constitution. The Commission filed a Motion for Rehearing which was denied by the Florida Supreme Court on April 20, 1995.

On July 31, 1995, Cherry filed a Motion to Consider and Accept Offer of Settlement.

## II. SETTLEMENT OFFER

As noted above Cherry has submitted an offer of settlement. The settlement is summarized as follows:

1. Cherry presently does not solicit its services through telemarketing and only employs the use of signed letters of agency which are individually verified.
2. Cherry will make a contribution to the general revenue fund of the state of Florida of \$100,000 in full settlement of all proceedings in this docket.
3. The \$100,000 payment will be paid at the rate of \$10,000 per month over a 10 month period, commencing on September 1, 1995 and payable on the first day of each month thereafter for a period of 10 months, until paid in full, without interest.
4. Cherry will be allowed to immediately commence operations within the State of Florida, pursuant to its Certificate of Public Convenience and Necessity (no. 3034).
5. Cherry will comply with and adhere to all the rules and regulations of the Florida Public Service Commission and of the Federal Communications Commission.

A copy of the offer and the motion in support of the offer are attached to this Order as Attachment A.

At a meeting with members of our staff on April 7, 1995, Cherry provided various materials describing its operations for review. The information was provided to illustrate the status of

Cherry's activities in other states and the company's efforts to resolve its problems with slamming. Our staff reviewed samples of the letter of agency, contracts between Cherry and its sales agents, and court actions in other states. The review indicates that Cherry has taken sufficient remedial steps to avoid repetition of its past difficulties with unauthorized changes in customers' presubscribed interexchange carriers. The settlement documents detail sufficient steps that, if adhered to, give reasonable indication that the Company will avoid any further slamming problems. We also note that Cherry does not appear to have processed any PIC changes in Florida consistent with the condition placed on the grant of the stay.

The only remaining question is the extent to which Cherry's offer of \$100,000 payment is sufficient under the circumstances in this case. We have previously rejected two offers of settlement proffered by Cherry. The first was filed by Cherry on May 25, 1993, and consisted of a payment of a \$60,000 penalty to be followed with a \$10,000 payment should the company fail to reduce its complaint levels. The second offer of settlement of \$100,000 was made orally during the June 8, 1993, Agenda Conference. Also, at the August 26, 1993 Agenda Conference, the Commission rejected staff's alternative recommendation of a fine from \$250,000 to \$500,000 plus restrictions on the company's operations in favor of staff's primary recommendation to revoke the certificate. We note that financial penalties paid by Cherry in ten other states ranged from zero to \$100,000, and that the company entered into a consent decree with the Federal Communications Commission to make payments to the U. S. Treasury totaling \$500,000.

The steps taken to remedy past slamming problems appear reasonable. Further, the \$100,000 payment also appears reasonable under the circumstances here. In view of the steps taken to avoid future problems but also in recognition of the extent and gravity of the past violations, we find that the settlement offer proposed by Cherry should be accepted.

At the Agenda Conference at which we considered this matter, Cherry requested that, in view of our approval of the settlement offer, the Commission allow Cherry to immediately resume solicitation of customers in Florida. Upon consideration of this request, Cherry is hereby allowed to begin solicitation of customers in Florida upon payment of the first installment of the monetary portion of the settlement as described above.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Offer of Settlement filed by Cherry Payment Systems, Inc. d/b/a Cherry Communications is approved as set forth in the body of this Order. It is further

ORDERED that Cherry Payment Systems, Inc. d/b/a Cherry Communications's request to resume solicitation of customers is granted effective upon payment of the first installment of the monetary portion of the settlement offer as set forth in the body of this Order. It is further

ORDERED that this docket be and the same is hereby closed.

By ORDER of the Florida Public Service Commission, this 21st day of September, 1995.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

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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.

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, 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 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show  
cause proceedings against  
CHERRY PAYMENT SYSTEMS, INC.  
d/b/a CHERRY COMMUNICATIONS  
for violation of Rule 25-4.118,  
F.A.C., Interexchange Carrier  
Selection.

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OFFER OF SETTLEMENT

Cherry Communications, Incorporated ("Cherry"), by its undersigned counsel, hereby submits the following terms for consideration in settlement of all proceedings in this docket:

1. Cherry does not solicit its services through telemarketing/third party independent verification. Currently, Cherry only employs the use of signed written Letters of Agency ("LOAs"), that are all individually verified by Cherry's verification department, which is a bank of in-house personnel who verify each signed LOA. On Cherry's LOA form, there is a specific space where the LOA is verified by Cherry's in-house verification personnel and a verifying piece of information is obtained from the customer, such as date of birth or mother's maiden name. To eliminate any incentive to act improperly, Cherry's verification employees are paid an hourly wage, not a commission based on sales. In taking the measures it has, Cherry surpasses the requirements of the four basic customer switching rules promulgated by the FCC for all telecommunication companies. Cherry has hired a Vice President of Security and Regulatory Compliance and several compliance monitors to ensure that all personnel are complying with federal and state regulatory rules. Further, Cherry developed employee/management contracts incorporating strict requirements for employee and managerial compliance with federal and state regulations. Any violation of these agreements by employees will result in the employee's immediate dismissal.
2. Cherry will make a contribution to the general revenue fund of the State of Florida of \$100,000, with no admission of liability or wrongdoing, in order to avoid



- the costs and expenses of further litigation and in order to resolve their differences with the Florida Public Service Commission and in full settlement of all proceedings in this docket.
3. The aforesaid payment by Cherry of \$100,000 will be paid at the rate of \$10,000 per month over a 10 month period, commencing on September 1, 1995 and payable on the first day of each month thereafter for a period of 10 months, until paid in full, without interest.
  4. The conditions of the Order Granting Stay entered by the Commission on October 25, 1993 which prohibited Cherry from soliciting Floridians or submitting PIC changes for Floridians, be eliminated forthwith, and that Cherry be allowed to immediately commence operations within the State of Florida, pursuant to its Certificate of Public Convenience and Necessity (no. 3034).
  5. Cherry will comply with and adhere to all of the rules and regulations of the Florida Public Service Commission and of the F.C.C.

Respectfully submitted,  
CHERRY COMMUNICATIONS, INCORPORATED

By:   
One of Its Attorneys

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**MOTION TO CONSIDER AND ACCEPT  
OFFER OF SETTLEMENT**

Cherry Communications, Incorporated ("Cherry") by and through its undersigned attorneys, respectfully Moves that the Florida Public Service Commission consider and accept the attached Offer of Settlement. In support thereof, Cherry states as follows:

1. On February 22, 1993, the Florida Public Service Commission issued an Order Initiating Show Cause Proceedings against Cherry.
2. On March 15, 1993, Cherry filed a Formal Response to the Order Initiating Show Cause Proceedings as well as a Petition for a Formal Proceeding.
3. A formal hearing was conducted before the Commission in June 1993 resulting in a Final Order, dated September 20, 1993, Revoking Cherry's Certificate of Public Convenience and Necessity (no. 3134).
4. On October 25, 1993, the Commission granted Cherry's Request for Stay, on the condition that Cherry be prohibited from



soliciting Floridians or submitting PIC changes for Floridians during the pendency of the Stay.

5. On January 31, 1994, the Commission issued its Order Upon Reconsideration denying Cherry's Motion for Reconsideration.

6. On February 28, 1994, Cherry filed its Notice of Administrative Appeal to the Florida Supreme Court, challenging the Revocation Orders of the Commission.

7. On February 2, 1995 the Supreme Court of Florida, in the case styled Cherry Communications, Inc., Petitioner vs. J. Terry Deason, etc. et al., Respondents, case no. 83,274 Unanimously agreed with Cherry that the Commissions' post hearing procedure violated Cherry's due process rights and the Supreme Court VACATED the Orders under review and Remanded to the Commission for a new hearing, consistent with its Opinion.

8. The Commission timely filed a Motion for Re-hearing which was denied by the Florida Supreme Court, on April 20, 1995.

9. Since the formal hearing held before the Commission in June 1993, Cherry has implemented practices and procedures across the nation, which it believes will result in strict compliance with all industry rules and regulations against slamming, justifying the resolution of the pending Rule to Show Cause, by Settlement between the Parties.

10. Cherry determined that the use of verified written Letters of Agency ("LOAs"), see Exhibit "A", is far superior to independent third party verification for telemarketing sales or

unverified LOAs, in ensuring that all orders for its interexchange services are genuine. To that end, from June 1993 to the present, Cherry employs the use of signed written LOAs only, that are all individually verified by Cherry's verification department, which is a bank of in-house personnel, who verify each signed LOA. On Cherry's LOA form, there is a specific space where the LOA is verified by Cherry's in-house verification personnel and a verifying piece of information is obtained from the customer, such as date of birth or mother's maiden name. To eliminate any incentive to act improperly, Cherry's verification employees are paid an hourly wage, not on a commission based on sales. In taking the measures it has, Cherry far surpasses the requirements of the four basic customer switching rules promulgated by the FCC for all telecommunication companies. Cherry also hired a Vice President of Security and Regulatory Compliance and several compliance monitors to ensure that all personnel are complying with federal and state regulatory rules. Further, Cherry developed employee/management contracts incorporating strict requirements for employee and managerial compliance with federal and state regulations. Any violation of these agreements by employees will result in the employee's immediate dismissal, see Exhibit "B".

11. Cherry is currently authorized to serve 34 states (in addition to Florida), see Exhibit "C", plus the District of Columbia and has an FCC license, FCC 214 International license

against Cherry in Florida, since they began doing business in Florida.

14. The approval of Cherrys' Offer of Settlement will serve the public interest by allowing Cherry to once again engage in business in Florida, pursuant to its Certificate of Public Convenience and Necessity (no. 3034), by providing interexchange telecommunication services to Floridians. Cherry will provide customers with service of high technical quality. Cherry's network is comprised of very sophisticated equipment, utilizing

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leased digital facilities and Signalling System 7 wherever possible. Further, a large percentage of Cherry's long distance traffic is carried over fiber optic cable. Customers experience faster connections and clearer transmission on Cherry as compared to many other interexchange carriers. In addition, Cherry customers benefit from lower rates on their toll calls. Customers can potentially realize significant savings on their overall long distance bill by subscribing to Cherry's service.

Cherry's renewed activity in Florida will also put greater competitive pressure on the incumbent carriers to reduce prices, improve services and operate more efficiently, in order to retain market share.

WHEREFORE, for the foregoing reasons, Cherry respectfully Moves that the Florida Public Service Commission consider and accept the attached Offer of Settlement.

Respectfully submitted,

CHERRY COMMUNICATIONS, INCORPORATED

By: Robert L. Shevin  
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