

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECEIVED
JAN 21 11:11 AM '99
DIVISION OF RECORDS AND REPORTING

DATE: JANUARY 21, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF COMMUNICATIONS (ISLER) *PW*
DIVISION OF LEGAL SERVICES (K. PEÑA) *KMP/KCB*

RE: DOCKET NO. 981273-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 4368 ISSUED TO JAMES M. BRACEWELL D/B/A SOUTHERN TELECOMMUNICATIONS, FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 02/02/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981273.RCM

CASE BACKGROUND

James M. Bracewell d/b/a Southern Tele-Communications obtained Florida Public Service Commission Pay Telephone Certificate Number 4368 on January 6, 1996.

On December 11, 1997, the Division of Administration mailed the regulatory assessment fee (RAF) notice by certified mail. Staff received the return receipt from the United States Postal Service (USPS) which showed that the RAF notice was signed for and delivered on December 16, 1997.

The Division of Administration advised staff by memorandum that this company had not paid its 1997 RAF, plus statutory penalties and interest for the year 1997.

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FPSC-RECORDS/REPORTING

After the docket was opened, but prior to staff filing a recommendation, Mr. Bracewell contacted staff. Mr. Bracewell stated that he wanted to keep the certificate, would pay all past due charges and make a proposed settlement offer. The company has since paid the 1997 RAFs, plus statutory penalty and interest charges, proposed to pay a \$500 contribution in 10 equal installments of \$50 per month, and pay future regulatory assessment fees on a timely basis. (ATTACHMENT A) Therefore, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Southern Tele-Communications to resolve the apparent violations of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

PRIMARY RECOMMENDATION: No. The Commission should not accept Southern Tele-Communications' settlement offer as proposed. The Commission should accept the settlement amount of \$500, but instead of allowing the company to pay the settlement in installments, the Commission should require the company to pay the fine in one lump sum. Any contribution should be paid by the company within five business days from the effective date of the Commission Order. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. (Moses)

ALTERNATIVE RECOMMENDATION: Yes. The Commission should accept Southern Tele-Communications' settlement offer. Any contribution should be paid in installments of \$50 per month and be received by the Commission by the 28th of each month until paid. The first \$50 installment should be received by the Commission by March 28, 1999. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. (Isler)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides

for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of Administration notified staff by memorandum that the company had not submitted the regulatory assessment fees for 1997, along with statutory penalties and interest charges for the year 1997.

After the docket was opened, but prior to staff filing a recommendation, Mr. Bracewell contacted staff. Mr. Bracewell stated that he wanted to keep the certificate, would pay all past due charges and make a proposed settlement offer. The company has since paid the 1997 RAFs, plus statutory penalty and interest charges, proposed to pay a \$500 contribution in 10 equal installments of \$50 per month, and pay future regulatory assessment fees on a timely basis. (ATTACHMENT A)

In previous cases, the Commission has accepted a \$100 settlement in lieu of pay telephone companies having their certificate canceled or paying the full amount of the fine. However, since this is the second docket to be opened against this company for the same rule violation, staff believes the \$500 settlement proposal is appropriate.

PRIMARY STAFF ANALYSIS: This is the second time a docket has been opened against this company for nonpayment of the regulatory assessment fees (RAFs). The first time was Docket No. 971340-TC, in which the company did not pay its 1996 RAFs. After the docket was opened but prior to the Agenda Conference, the company paid the past due amount in full and the docket was closed. Since the regulatory assessment fees were paid prior to the Agenda Conference, the fine was not assessed.

Accordingly, staff believes the terms of the settlement agreement as summarized in this recommendation should be accepted in part and denied in part. Staff believes that the amount of the settlement is appropriate. However, staff believes that the \$500 settlement should be paid in one lump sum.

ALTERNATIVE STAFF ANALYSIS: Southern Tele-Communications was granted a pay telephone certificate on January 6, 1996. According to the owner, Mr. James M. Bracewell, he did not own any payphones until October 1998, therefore, he had not realized any revenues. He stated that he now has 15 pay telephones in service in the Panama City area and barely makes enough to cover the loan amount for the payphones and the monthly telephone bill. Mr. Bracewell stated that if he were required to pay the \$500 fine in one lump

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sum, it would cause a financial hardship. Although this is the second docket to be opened against Southern Tele-Communications for the same rule violation, staff believes that Mr. Bracewell should be given an opportunity to pay the settlement in installments. Mr. Bracewell now appears to understand the importance of complying with this, and other Commission rules, and stated in his settlement that "This problem will never happen again."

The Commission has accepted installment payments from other companies, although to staff's knowledge, not for nonpayment of regulatory assessment fees.

Accordingly, staff believes the terms of the settlement agreement as summarized in this recommendation should be accepted. Any contribution should be paid in installments of \$50 per month and be received by the Commission by the 28th of each month until paid. The first \$50 installment should be received by the Commission by March 28, 1999. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission approves staff's primary recommendation in Issue 1, and upon remittance of the \$500 contribution, this docket should be closed. No, if the Commission approves staff's alternative recommendation in Issue 1, this docket should remain open pending staff's verification of the installment contribution. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. Staff should be given administrative authority to close the docket upon verification that all installment payments have been made. (K. Peña)

STAFF ANALYSIS: If the Commission approves staff's primary recommendation in Issue 1, and upon remittance of the \$500 contribution, this docket should be closed. If the Commission approves staff's alternative recommendation in Issue 1, this docket should remain open pending staff's verification of the installment contribution. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. Staff should be given administrative authority to close the docket upon verification that all installment payments have been made.

DEPOSIT

DATE

DEAR PAULA ISLEIZ,

D038 *

NOV 30 1998

105
50.00 RAF
17.50 P&I
11/24/98
PP
TF536

THE REASON I HAVE BEEN LATE WITH MY REGULATORY ASSESSMENT FEE IS, I HAVE NEVER HAD ANY PAYPHONES UNTIL OCT OF THIS YEAR. AFTER YOUR PHONE CALL 11-24-98 I FULLY UNDERSTAND. SINCE I HAVE PAID THE AMOUNT DUE PLUS PENALTY & LATE FEE'S I WOULD LIKE TO MAKE A \$500.00 SETTLEMENT IN LIEU OF LOSING MY CERTIFICATE. IF I CAN I WOULD LIKE TO SETUP A PAYMENT PLAN TO PAY THE \$500.00 IN 10 EQUAL PAYMENTS OF \$50.00 PER MONTH STARTING DEC OF 1998 AND ALL PAYMENTS WILL BE PAID ON OR BEFORE & NO LATER THAN THE 28TH OF EACH MONTH. I WILL ALSO SEE THAT 1998 ASSESSMENT FEES ARE PAID IN JANUARY 1999. THIS PROBLEM Paula Isleiz WILL NEVER HAPPEN AGAIN. PLEASE LET ME KNOW IF I CAN DO ANYTHING ELSE.

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THANK YOU

JAMES BRACEWELL