



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

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DATE: MAY 3, 2001

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

FROM: DIVISION OF LEGAL SERVICES (ELLIOTT) *JAE*
DIVISION OF COMPETITIVE SERVICES (BUYS) *DB*

RE: DOCKET NO. 010180-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST ETS PAYPHONES OF FLORIDA, INC. FOR APPARENT VIOLATION OF RULE 25-24.515, F.A.C., PAY TELEPHONE SERVICE.

AGENDA: 05/15/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010180.RCM

CASE BACKGROUND

- September 15, 1995 - ETS Payphones of Florida, Inc. (ETS) was granted Certificate No. 4238 to provide pay telephone services in the State of Florida.
- October 30 and November 1, 2000 - Staff performed routine service evaluations on four pay telephone stations operated by ETS and found several apparent pay telephone service violations.
- November 7, 2000 - Staff mailed ETS notification of the apparent violations and requested that ETS make the appropriate corrections.
- November 14, 2000 - The Commission received notification that ETS has filed for relief under Chapter 11 of the United States Bankruptcy Code.

DOCUMENT NUMBER-DATE

05598 MAY-30

PSC-RECORDS REPORTING

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- November 29, 2000 - Staff sent ETS a second notification of the violations via certified mail.
- December 1, 2000 - ETS submitted a Service Violation Correction Form to staff indicating that all the apparent violations were corrected.
- December 18 and 19, 2000 - Staff evaluated the same four pay telephone stations a second time and discovered that some of the violations were still present. (Attachment A)
- January 6, 2001 - Staff opened this docket to initiate show cause proceedings against ETS.
- February 15, 2001 - Staff received a letter from ETS in which the company proposed a settlement offer in lieu of proceeding with the show cause. (Attachment B)
- March 22, 2001 - Staff received ETS' revised settlement offer. ETS included a statement in which it waives its right to object to the administrative cancellation of its certificate in the event the settlement proposal is accepted by the Commission and the company ultimately fails to comply with the terms of its offer. (Attachment C)
- April 6, 2001 - ETS reported intrastate operating revenue of \$2,879,652.00 on its regulatory assessment fee return for the period January 01, 2000, through December 31, 2000.

The Florida Public Service Commission is vested with jurisdiction over these matters pursuant to Sections 364.285 and 364.3375, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by ETS Payphones of Florida, Inc. to resolve the apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service?

RECOMMENDATION: Yes. The Commission should accept the company's settlement offer to contribute \$200 per violation, totaling \$800, to the State of Florida General Revenue Fund to resolve the apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service. The contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. 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. If ETS fails to pay in accordance with the terms of the settlement offer, Certificate No. 4238 should be canceled and this docket should be closed. ETS has waived the right to object to cancellation of its certificate. **(ELLIOTT/BUYS)**

STAFF ANALYSIS: Staff performed service evaluations of four pay telephone stations operated by ETS; two on October 30, 2000, and two on November 1, 2000. Through written correspondence, staff notified ETS of the apparent violations. ETS subsequently submitted a Service Violation Correction Form to staff indicating that the violations cited in the aforementioned evaluations have been corrected.

Staff performed a second evaluation of the same four pay telephone stations on December 18 and 19, 2000. Three of the pay telephones did not have a legible and correct telephone number, the correct address of the pay telephone location, and the certificate number of the provider displayed as required by Rule 25-24.515(9)(a), Florida Administrative Code. In addition, one of the three pay telephone stations did not have the proper directory. Although ETS reported that all the violations have been corrected, the table provided as Attachment A depicts the apparent rule violations that were still present during the second evaluation. Hence, ETS is apparently in violation of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service.

Consequently, staff opened this docket to initiate show cause proceedings against ETS. At that time, staff was not aware that ETS had filed voluntary petitions for relief under Chapter 11 of

the United States Bankruptcy Code. Chapter 11 of Section 109 of the United States Bankruptcy Code provides for reorganization by business entities. The filing of a bankruptcy petition under Chapter 11 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Section 362(b)(5) provides that, for governments, the filing of the petition does not operate as a stay "of the enforcement of a judgment, other than a money judgment, obtained in an actual proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." (emphasis added) Thus, it would appear that the Commission is not enjoined from exercising its police powers to protect public health, safety and welfare, but is enjoined from exercising its regulatory authority seeking to collect a debt or engage in other economic regulation. The Commission is not seeking to collect a debt or engage in economic regulation. In this case, the show cause proceedings are for the apparent violation of service rules which the Commission has established to protect public health, safety and welfare. Pursuant to Rule 25-24.514, Florida Administrative Code, the Commission may cancel a company's certificate for violation of the Commission's rules.

ETS has voluntarily offered a monetary settlement in lieu of continuing with the show cause proceedings which could result in the cancellation of its certificate. In a letter received on March 22, 2001, ETS proposed a settlement offer and included a waiver of objection to the administrative cancellation of the company's certificate in the event the settlement proposal is accepted and the company ultimately fails to comply with the terms of its offer. In its settlement proposal, ETS offered to:

- Conduct an investigation of all its Florida payphones to assure compliance with the [rules of] the Commission.
- Make a voluntarily contribution of \$200 per violation for a total of \$800 to the State of Florida General Revenue Fund.

Staff believes that ETS' settlement offer is fair and reasonable and ETS has satisfactorily addressed the issues in this docket. Accordingly, staff recommends that the Commission accept the \$800 settlement offer proposed by ETS to resolve the apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. 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. If ETS Payphones

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of Florida, Inc. fails to pay in accordance with the terms of the settlement offer, the company's certificate should be canceled, and this docket should be closed. ETS has waived the right to object to cancellation of its certificate.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation is approved, this docket should remain open pending the remittance of ETS' \$800 voluntary contribution. After receipt of the \$800 voluntary contribution, this docket may be closed administratively. If the company fails to pay the settlement contribution, this docket may be closed upon cancellation of ETS' certificate.

(ELLIOTT)

STAFF ANALYSIS: If staff's recommendation is approved, this docket should remain open pending the remittance of ETS' \$800 voluntary contribution. After receipt of the \$800 voluntary contribution, this docket may be closed administratively. If the company fails to pay the settlement contribution, this docket may be closed upon cancellation of ETS' certificate.

Rules Violations per Telephone Station		
Pay Telephone Station Number	Rule 25-24.515(9) (a)	Rule 25-24.515(16) (a)
9048792481	X	X
9048792472	X	
9042619028	X	

Rule 25-24.515(9) Except as provided in paragraph 9(c), each pay telephone station shall be equipped with a legible sign, card, or plate of reasonable permanence which shall identify the following:

(a) The telephone number and location address of the pay telephone station, name and certificate number of the certificate holder, the party responsible for repairs and refunds, address of responsible party, free phone number of responsible party, clear dialing instructions (including notice of the lack of availability of local or toll services), and the local coin rate.

Rule 25-24.515(16) (a) Where there is a single pay telephone station, a directory shall be maintained at each station. Where there are two or more pay telephone stations located in a group, a directory for the entire local calling area shall be maintained at every other station. However, where telephone pay stations are fully enclosed, a directory shall be maintained at each pay telephone station. For purposes of this rule, the term "directory" shall mean both a current white page directory for the local calling area and a reasonably current yellow page directory that is appropriate for the calling area of the pay telephone station. Companies must comply with this subsection by June 30, 1999, or six months after the effective date of this rule, which ever is longer.



2001 FEB 16 AM 10:38

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COMPETITIVE SERVICES

2/13/01

Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Attn: Dale Buys

Re: Settlement Offer

Dear Mr. Buys:

ETS Payphones would like to voluntarily offer a settlement to the General Revenue Fund of the State of Florida for \$200.00 per violation for a total of \$800.00. The settlement offer would be in lieu of a Show Cause with the Commission. At the present time we are in violation of rules 25-24.515-10, 25-24.515-11, 25-24.515-12, 25-24.515-21, of the Florida Administrative Code.

ETS intends to conduct an investigation of all of its Florida payphones to assure compliance with the Florida Public Service Commission. Should questions concerning payphone violations arise, we will call your office for clarity before sending responses.

We appreciate any consideration you could give this request. Thank you for your cooperation and patience with this matter. If you have any questions or concerns please feel free to call me at (770) 819-1600 ext. 1333.

Sincerely,

A handwritten signature in cursive script that reads 'Susan Rabig'.

Susan Rabig
Regulatory Administrator

CC: Deborah Forrester – Director of Regulatory



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MAIL ROOM

March 22, 2001

Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
Attn: Dale Buys

2001 MAR 26 AM 10:46
DIVISION OF
COMPETITIVE SERVICES

Re: Settlement offer revision per your request

Dear Mr. Buys;

ETS Payphones hereby respectfully tenders its settlement offer in lieu of proceeding with the initiation of show cause proceedings in Docket #010180-TC for the apparent violation of Rule 25-24.515, F.A.C., Pay Telephone Service.

In the spirit of settlement, and without conceding that any grounds exist that would justify the imposition of a penalty, ETS Payphones voluntarily offers to contribute \$800.00 to the State of Florida General Revenue Fund.

ETS Payphones waives its right of objection to the administrative cancellation of its certificate in the event its offer to pay as settlement to the General Revenue Fund (\$200.00 per violation totaling \$800.00) is accepted by the Commission and we fail to comply with the payment terms we have offered in a timely manner.

We appreciate any consideration you could give to this request. Thank you for your cooperation and patience with this matter. If you have any questions or comments, please feel free to call me at (770) 819-1600, extension 1333.

Respectively your,

Susan Rabig
Regulatory Administrator

Cc: Deborah Forrester – Director of Regulatory
Joel Geer – Legal Counsel