

M E M O R A N D U M

NOVEMBER 20, 2002

TO: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

FROM: OFFICE OF THE GENERAL COUNSEL (CHRISTENSEN) *PAC*

RE: DOCKET NO. 020468-TC - APPLICATION FOR CERTIFICATE TO PROVIDE PAY TELEPHONE SERVICE BY EQUITY PAY TELEPHONE CO., INC., AND PETITION FOR WAIVER OF PROVISIONS OF RULE 25-24.511(5), F.A.C., WHICH DISALLOWS REINSTATEMENT OF INVOLUNTARILY CANCELED CERTIFICATE.

Please enter the attached petition and correspondence, received today from Mr. Robert T. Furlong, in the above-referenced docket file.

PAC/js
Attachment
cc: Toni McCoy

DOCUMENT NUMBER-DATE

12739 NOV 20 02

FPSC-COMMISSION CLERK

November 22, 2002

NOV 18 2002

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Equity Pay Telephone Co., Inc.
Order No. 961482-TC, Certificate Number 5073.

Dear Florida PSC:

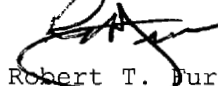
Enclosed please find a Petition from exemption from Rule 25-24.511(5). In conjunction with the submission of this petition we wish to revoke our previously filed Petition for Waiver of Rule filed on May 10, 2002 with regard to Docket No. 010686-TC.

Furthermore, we submit into evidence our good faith efforts in trying to resolve this matter the attached letter of facts as stated by Jessica Elliott of the State of Florida PSC dated January 17, 2002.

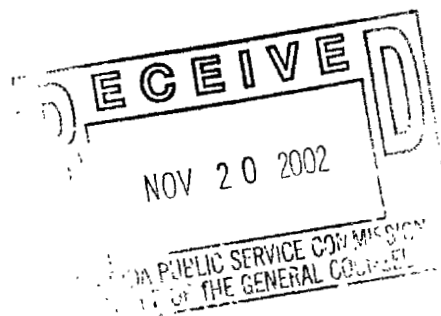
Again, we respectfully submit that the Exemption from the rule be granted and/or based on the enclosed a complete reinstatement of Order No. 961482-TC, Certificate Number 5073.

Please feel free to contact me at 912-754-7220 with any questions.

Sincerely,



Robert T. Durlong
President
Equity Pay Telephone Co., Inc.



PETITION FOR EXEMPTION FROM RULE 25-24.511(5),
FLORIDA ADMINISTRATIVE CODE, BY EQUITY PAY TELEPHONE CO., INC.

Equity Pay Telephone Co., Inc., by and through undersigned Petitioner, hereby requests that the Florida Public Service Commission (Commission) pursuant to Section 364.3375 (1) (b), Florida Statutes grant Equity Pay Telephone Co., Inc. an exemption from Rule 25-24.511 (5), Florida Administrative Code, which states that a new certificate will not be granted to any applicant who has previously had a certificate involuntarily cancelled.

1. On 1/21/97, Equity Pay Telephone Co., Inc. was granted a certificate of public convenience and necessity to provide pay telephone service by Order No. 961482-TC, Certificate Number 5073.
2. Order No. 961482-TC, Certificate Number 5073, Equity Pay Telephone Co., Inc.'s, certificate was involuntarily cancelled for failure to file a the Regulatory Assessment Fee ("RAF") form timely, however such amounts were filed late and payment was made prior to cancellation of such Order No.. Specifically, the Order was cancelled solely due to a failure to file only the required written Settlement in Compromise in regards to its regulatory assessment fees.
3. Section 364.3375 (1) (b), Florida Statutes, authorized the Commission to exempt a pay phone provider from all or some of the requirements of Chapter 364, if the Commission determines that the exemption to be in the public interest. Thus, the Commission is authorized to grant an exemption to a pay phone provider from Rule 25-24.511(5), Florida Administrative Code, which states that no new certificate will be granted to a pay phone provider which was previously involuntarily cancelled if the Commission determines that granting the exemption is in the public interest.
4. Equity Pay Telephone Co., Inc., submitted an application to provide pay telephone service in Florida. The company promises that if a new certificate is granted that all future RAFs will be paid in a timely manner. The Company has hired a Chief Financial Officer who is responsible for such filings that were previously handled by third parties.

5. Further, the company has paid/or will pay all outstanding RAFs including penalties and interest. The Company has paid all RAF's prior to such cancellation and the cancellation was simply an administrative issue pertaining to non-receipt through the US Mail of the required written Settlement in Compromise as stated above.

6. For the foregoing reasons, the company believes it is in the public interest go grant it an exemption from Rule 25-24.511 (5), Florida Administrative Code, and allow its application for a certificate to be approved or Order No. 961482-TC, Certificate Number 5073 be reinstated which would additionally save the company the financial hardship of ordering new certificate plates for its phones.

Respectfully Submitted,



Robert T. Furlong
President
Equity Pay Telephone Co., Inc.
912-754-7220

Equity Pay Telephone Co., Inc.
5747 Highway 17 North
Guyton, GA 31312

All Notices, Orders or Document regarding this Petition should be direct to the above.

DATE: February 7, 2002

FAXED
MAR 12 2002

STATE OF FLORIDA



TO: BY:
Andy Hubbs

Fax: 610-617-2580
Voice: 610-213-2502

PUBLIC SERVICE COMMISSION

2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0850

FROM:
JESSICA ELLIOTT

Fax: 850-413-6180

Voice: 850-413-6179

NUMBER OF PAGES INCLUDING
COVER PAGE:

7

Note:
Here is another copy of the letter and the rule and statute you requested.



A. Gibbs & Associates, P.C.
 600 Hidden Valley Road
 King of Prussia, PA 19406

March 1, 2002

State of Florida
 Public Service Commission
 2540 Shumard Oak Boulevard
 Tallahassee, FL 32399-0850

Re: Equity Pay Telephone, Inc.
 Docket No. 010686-TC

Dear Ms. Elliott:

As you know, we have had several conversations about the cancellation of the RAF for the above Company pursuant to violation of Rule 25-4.0161. They were as follows:

1. The Company had never filed a Florida RAF form before and was unfamiliar with the form.
2. The Company forwarded this form to the office of A. Gibbs & Associates, P.C. who are tax accountants and engaged to prepare tax related information.
3. On October 15, 2001, my office completed the form, faxed and sent via overnight mail payment, the form and a letter requesting abatement of penalties.
4. On October 22, 2001, a check for \$100 was sent in for the offer in settlement and such check cleared the bank.
5. On November 1, the Company received a letter from the Department of Finance with a penalty of \$17.00. The Company paid this fine.
6. On November 16, 2001, Mr. Gibbs wrote a letter regarding the confusion around this issue with another check for \$100.00 for the settlement.
7. The Public Service Commission acknowledged the check and conversations but because of the technicality of the fact that they could not locate the written settlement offer which was in the form of a letter, the certificate was cancelled.

Furthermore, in additional conversations, ~~the taxpayer was advised to send in a new application and this letter for reinstatement.~~

The taxpayer requests that Certificate Number 5073 be reinstated, or a new Certificate number ~~5073A be issued so that the taxpayer can alleviate the hardship of~~ providing new display Certificates for all of the pay telephones.

As an alternative, please consider processing the new application and issuing the old Certificate number ~~5073.~~

I can be reached at 610-213-3522 or Mr. Furlong at 912-754-7220 with questions. Thank you.

Sincerely,



Andrew S. Gibbs, CPA, CVA

STATE OF FLORIDA

COMMISSIONERS:
 LILA A. JABER, CHAIRMAN
 J. TERRY DEASON
 BRAULIO L. BAEZ
 MICHAEL A. PALECKI
 RUDOLPH "RUDY" BRADLEY



OFFICE OF GENERAL COUNSEL
 HAROLD A. MCLEAN
 (850) 413-6199

Public Service Commission

January 17, 2002

413
 6/7/99

Mr. Robert F. Furlong
 Equity Pay Telephone Co., Inc.
 5747 Highway 17 North
 Guyton, GA 31312-3141

Re: ~~Docket No. 010686-TC - Cancellation by Florida Public Service Commission of Pay Telephone Certificate No. 5073 issued to Equity Pay Telephone Co., Inc. for violation of Rule 25-4.0367, F.A.C., Regulatory Assessment Fees, Telecommunications Companies.~~

Dear Mr. Furlong:

I am responding to ~~Andy Gibbs' letter dated November 16, 2001~~ Docket No. 010686-TC was established on May 4, 2001, to address Equity Pay Telephone Co., Inc.'s failure to pay its Regulatory Assessment Fees (RAFs), which were due January 30, 2001; plus statutory penalty and interest charges.

On May 21, 2001, ~~Paula Isler wrote a letter advising the company that a docket had been opened and explaining Florida Public Service Commission staff's intention to recommend that the Commission impose a \$500 fine. The recommendation was subsequently issued and was voted on at the FPSC's September 4, 2001, Agenda Conference. The Proposed Agency Action (PAA) order was issued on September 24, 2001, reflecting the Commission's vote.~~

After Mr. Gibbs called requesting information on this docket, ~~Paula Isler faxed a note with the RAFs form to him on October 10, 2001. The letter stated that the minimum amount due was \$67.00, which included the total of the minimum RAFs, plus penalties and interest. The note also stated that the Commission must receive a protest/settlement by October 15, 2001, or the certificate would be cancelled. On October 15, 2001, Mr. Gibbs called and said he would send the RAFs form and a written settlement offer by overnight mail. Mr. Gibbs was told that the payment was to be received on October 15, not mailed on October 15. In conversation with Ms. Isler that afternoon, Mr. Gibbs then requested that he be allowed to fax the settlement offer. We were not able to contact Mr. Gibbs until Monday, October 18. On October 18, after the protest period had ended but before the Consummating Order was issued, I spoke with Mr. Gibbs and told him that we received the minimum RAFs payment and the form that day but that we still needed a written settlement offer and the payment of the penalties and interest. I requested that he fax the settlement letter. These items were not received; therefore, on October 19, 2001, a Consummating Order was issued~~

CAPITAL CIRCLE OFFICE CENTER - 2540 SHUMARD OAK BOULEVARD - TALLAHASSEE, FL 32399-0850
 An Affirmative Action/Equal Opportunity Employer
 PSC Website: <http://www.floridapsc.com> Internet E-mail: contact@psc.state.fl.us

Mr. Furlong
Page 2
January 17, 2002

rendering the Commission's decision final. As such, in accordance with the Commission's decision, the docket would be closed and the certificate cancelled if the \$500 fine, as well as the penalty and interest were not paid within 5 business days of the Order. The docket was closed on October 26, 2001, when payment of the fine and past due amount were not received within five business days.

We received correspondence from Mr. Gibbs dated November 16, 2001, stating that he did not understand why the certificate was cancelled and that he had sent a check dated October 22, 2001, for \$100 as a settlement offer and that the check remained outstanding. We have no record of this check. Another check for \$100 was enclosed with the letter and was received on November 26, 2001. Nevertheless, a written settlement offer and payment of the penalties and interest were not received before the Consummating Order was issued on October 19, 2001, as required by the Commission's decision.

Consequently, Pay Telephone Certificate No. 5073 has been cancelled. Equiry Pay Telephone Co., Inc. may reapply for a new certificate by completing an application and including the \$100 non-refundable application fee, along with a cover letter explaining what circumstances have changed that will help the company avoid such problems in the future. In addition, the company will need to file a petition consistent with Section 120.542, Florida Statutes, requesting a waiver of Rule 25-24.511 (5), Florida Administrative Code, which prohibits an applicant who has previously had a certificate cancelled involuntarily from being issued another certificate to provide pay telephone service.

In similar cases, staff has also encouraged the entities to comply with the Commission's prior Order cancelling their respective certificate by paying the past due penalty and interest charges and the \$500 fine as a demonstration of their intent to comply with Commission rules. Please contact me at (850) 413-6179 if you have any questions. Please be aware that the opinions stated herein are those of this office and staff assigned to this case and are in no way binding upon the Commission.

Sincerely,



Jessica Elliott
Staff Counsel

JAE/anc
cc: Andy Gibbs
Paula Isler

Enclosures

ROSE GLEN CAPITAL GROUP, INC.

FAX

Date: 5/10/02
 Number of pages including cover sheet: 6

To: Jill G. Elliot Fax #: 850-413-6166
Robert Gay 916-751-1205

From: Andrew S. Gibbs

Note: If you experience any difficulty in receiving this fax, please contact Marg McCrea (610) 617-5916.

REMARKS: Urgent For your review Reply ASAP Please comment

RECEIVED
MAY 13 2002

CONFIDENTIALITY STATEMENT

The information contained in this facsimile transmission is legally privileged and/or confidential information intended only for the use of the individual or entity named above. If you, the reader of this message, are not the intended recipient, you are hereby notified that you should not further disseminate, distribute or copy this transmission. In addition, if you have received this transmission in error, please immediately notify us by telephone and return the original message to us at the address below via the U.S. Postal Service. Thank you.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Equity Pay Telephone Co., Inc. Docket No. 010686-TC
Waiver from Florida Administrative Code § Rule 25-24.511(5) Filed: May 10, 2002

PETITION FOR WAIVER OF RULE

COMES NOW, Equity Pay Telephone Co., Inc. ("Equity Pay"), pursuant to Rules 25-4.0161(1), 25-4.0161(7d), 25-24.511(5) Florida Administrative Code, and Sections 120 542(2), Florida Statutes, and files this Petition For Waiver with the Florida Public Service Commission ("Commission ") of rule 25.24.511(5) disallowing the reinstatement of an involuntarily cancelled certificate. In support of its Petition, Equity Pay states as follows:

- 1. Petitioner's name and address are:

Equity Pay Telephone Co., Inc.
5747 Highway 17N
Guyton, GA 31312

- 2. All notices, Orders or documents regarding this Petition should be directed to:

Robert T. Furlong
President
Equity Pay Telephone Co., Inc.
5747 Highway 17N
Guyton, GA 31312
Phone: 912-754-7220
Fax: 912-754-1205

I. BACKGROUND

3. Equity Pay was certified by the Commission to provide pay telephone service pursuant to Certificate Number 5073. Rules 25-4.0161(1), 25-4.0161(7d), 25-24.511(5) and 120.542(2) written under the authority of Florida Statutes is the subject of this Petition and provides in pertinent part:

25-4.0161 (1) "As applicable and as provided in a 350.113, F.S., and s. 364-336, F.S., each company shall remit a fee based upon its gross operating revenue as provided below. This fee shall be referred to as a regulatory assessment fee, and each company shall pay a minimum of \$50.00."

25-4.0161 (7d) ~~The return forms may be obtained from the Commission's Division of Administration.~~ The failure of a telecommunications company to receive a return form shall not excuse the company from its obligation to timely remit the regulatory assessment fees.

25-24.511 (5) ~~Only one certificate per applicant will be granted.~~ A new certificate will not be granted to any applicant who has previously had a certificate involuntarily cancelled.

120.542(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness...

4. Equity Pay has a multiple pay telephones in Florida. Pursuant to Rule 25-4.0161(1) Equity Pay was supposed to file and remit an annual return and regulatory assessment fee timely and failed to do so. Equity Pay did file such return, pay the minimum fee and offer a Settlement in Compromise, however, the required letter of explanation was not received in the U.S. Mail by Florida. Pursuant to Rule 25-4.0161(7d) even though the US mail failed to deliver this notice, Equity Pay is and did file this return. Pursuant to rule 25-24.511(5) the Commission has cancelled Equity Pay's privilege to keep the pay telephone certificate.

5. Equity Pay is owned and operated by Robert T. Furlong who originally filled out the application for a certificate to have pay telephones. At the time of signing the application, Robert T. Furlong fully understood all the rules and regulations concerning this pay telephone. All rules and regulations were always followed carefully and completely in all cases. Robert T. Furlong

knew and understood the requirement for an annual regulatory assessment fee at the time of signing the original application. For the 2000 RAF report, Petitioner retained a third party to complete such form. Apparently the accounting firm believed that Equity Pay and Mr. Furlong had already completed the form as he did in prior years and Mr. Furlong believed the accounting firm had filed the RAF for the 2000 year as retained to do so. Neither party determined the error until such Certificate was cancelled. Even a prudent man exercising good judgment could possibly make such error. The subsequent notices were erroneously and non intentionally overlooked due to the fact that each party believed the other was responsible for such matter. Due diligence and proper care was always taken in every other matter concerning the pay telephone, including all previous year filings were filed timely. This was the first time the accounting firm was retained and filed an annual report for this certificate holder. It is the opinion of Equity Pay that the law which states that... "failure to receive the form or "Offer in Compromise" (in this case) in the mail does not excuse the company from its obligation to timely remit the regulatory assessment fees and annual report form" is an unreasonable statement when the assessment and Settlement is prepared by a responsible third party. Immediately after being notified that the regulatory assessment fee was accidentally overlooked, Equity Pay and the Accounting firm immediately contacted Paul Isler and made appropriate measures and paid all fines and penalties immediately.

6. When a company fails to timely file a regulatory assessment fee return, the Commission has the authority to order the company to pay a penalty and/or cancel the company's certificate. In this certificate holders case, the Commission did both. A penalty of \$500.00 was assessed, the Petitioner's accountants spoke to Paula Isler and Jessica Elliot, Esq. of the Florida Public Service Commission, mailed the form, paid such file but was mailed the Settlement Offer, however such Settlement letter was never received by Florida in the U.S. Mail, AND the Commission cancelled the company's certificate privilege. The subject of this Petition is only to request that the Commission waiver its cancellation penalty, not to waiver the fines assessed which were already paid. Equity Pay believes it should have filed the regulatory assessment report and paid its fee timely and would have done so had he filed the RAF himself internally and not retained a third party to do so. However, the penalty of cancellation of the privilege to hold the certificate is a bit extreme for a simple oversight. All other requirements were substantially performed in every other

respect. Equity Pay believes the fine of \$100.00 was sufficient to never allow this simple oversight to occur again. Equity Pay commits to future complete compliance, especially the regulatory assessment report and Equity Pay has learned its lesson. In the event that the Commission finds in favor of petitioner, the lesson would never be forgotten again. Equity Pay's owner, Robert T Furlong will personally see to it that the return is paid timely and submitted timely in the future and will not even turn over the responsibility to a manager or any other third party or person, but will handle the responsibility seriously, personally and completely in the future, should the Commission allow the reinstatement of Equity Pay's certificate.

II. WAIVER REQUEST

7. Pursuant to 120.542(2), a waiver is hereby being sought on two grounds. First and foremost that cancellation of this certificate is an unfair and excessive application of this rule given the particular circumstances of this case and second that cancellation of this certificate could cause substantial economic hardship to Equity Pay. If this Commission finds the circumstances of this case warrants a waiver and that the underlying purpose of the rule is still being upheld by reducing the severity of the penalty, Equity Pay respectfully requests a waiver of Rule 25-24.511(5) requiring that a new certificate will not be granted to any applicant who has previously had a certificate involuntarily cancelled.

A. Substantial Hardship

8. The pay telephone's owned and operated by Equity Pay in Florida are its main source of revenue for the business. The pay telephone business is not as profitable as prior years and cellular phone users have been increasing thus hurting the coin telephone industry. Every coin telephone is critical to the on going business and concern of Equity Pay. Therefore, pursuant to 120.542(2), it is the subject of this petition to request that a waiver be approved based partially on the substantial economic hardship incurred by the Company. As stated earlier, the request that a waiver be approved is also based on the fact that the underlying rule has been satisfied by the severity of the penalty being limited to the fine only and not to canceling the certificate privilege also.

SATISFACTION OF UNDERLYING RULE

9. The purpose of rule 25-24.511(5) is to ensure that gross and intentional non compliance of all rules regarding pay telephones are severely punished to the point of making it impossible ever to break a rule again. The underlying rules are to protect the general public and are in their best interest. However, in the case of Equity Pay, there was only one rule broken and that was the timeliness of the annual report regulatory assessment fee for only one year in its history and such year was the responsibility of a third party. The annual assessment fee was accidentally overlooked during the first time a third party was retained to prepare such form and because the US Mail failed to deliver a the Settlement Offer, but not the actual payment of such Offer, it was not a gross or intentional non compliance of the rules. All other rules were followed exactly and completely. The fine of \$100,00 as Settlement Offer was severe enough to make it impossible to ever break the rule again. All regulatory assessment fees would be paid timely in the future since a \$100,00 fine was assessed and paid. Therefore, the underlying purpose of rule 25-24.511(5) will still be upheld even if this petition is approved. The severity of the fine is sufficient in the case of Equity Pay to make it impossible to ever miss filing the annual report again. Therefore in this particular circumstance, imposing rule 25-24.511(5) would be an unfair and excessive punishment for the simple oversight that happened.

III. CONCLUSION

WHEREFORE, Equity Pay respectfully requests that this Commission: (1) provide its legal interpretation of Rule 25-24.511(5) to be excessive for responsible third party errors, particularly considering the extenuating circumstances revolving around this case, and (2) allow the reinstatement of the certificate privilege, provided that no further rules are ever broken again.

Respectfully self submitted.

Mr. Robert T. Furlong
President

May 13 2002 10:24am

Last Fax

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
May 13	10:21am	Sent	Robert St. Simon	2:48	6	OK

Result:

OK - black and white fax