



Public Service Commission

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DATE: JUNE 5, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (MCCOY, PRUITT) *Y* OFFICE OF THE GENERAL COUNSEL (TEITZMAN) *M PRUB* *SAS for TU* *[Signature]*

RE: DOCKET NO. 021181-TC - APPLICATION FOR CERTIFICATE TO PROVIDE PAY TELEPHONE SERVICE BY PHILLIPS & BROOKS/GLADWIN, INC.

AGENDA: 06/17/03 - REGULAR AGENDA - ISSUE 1 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE - ISSUE 2 - PROCEDURAL

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\021181.RCM

CASE BACKGROUND

On November 22, 2002, Phillips & Brooks/Gladwin, Inc. (Phillips) filed an application for a certificate to provide pay telephone service in Florida. A review of the application revealed that the company's filing at the Florida Department of State, Division of Corporations, was inactive, and Phillips was no longer qualified to transact business in Florida. On November 27, 2002, staff spoke with the company representative concerning this problem. Staff was informed that the information necessary to complete the application, including an active corporate status, would be filed with the Commission.

Staff called the company on January 8, 2003, and left a message requesting the information. On January 28, 2003, staff

DOCUMENT NUMBER-DATE
05004 JUN-5 8
PSC-COMMISSION CLERK

DOCKET NO. 021181-TC
DATE: JUNE 5, 2003

mailed the company representative a letter reiterating the need for the information.

On April 2, 2003, a certified letter was mailed to the company's Vice President of Operations, addressing the application deficiencies and requesting a response by April 23, 2003. The verification card for the letter was returned by the Post Office marked "signed and delivered." As of the date of this recommendation, no response has been received.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.33, 364.335 and 364.3375, Florida Statutes. Accordingly, staff believes the following recommendation is appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Phillips & Brooks/Gladwin, Inc. a certificate to provide pay telephone service within Florida as provided by Sections 364.335 and 364.3375, Florida Statutes?

RECOMMENDATION: No. Phillips & Brooks/Gladwin, Inc. should not be granted a pay telephone certificate to operate in Florida. (McCoy)

STAFF ANALYSIS: Phillips & Brooks/Gladwin, Inc. has failed to submit a complete application and has failed to respond to staff's repeated requests for additional information. Section 364.335, Florida Statutes, states that granting a certificate must be consistent with the public interest. Staff does not believe it is in the public interest to approve the application submitted by Phillips & Brooks/Gladwin, Inc.

Staff is recommending that Phillips & Brooks/Gladwin, Inc.'s application to provide pay telephone services within the State of Florida be denied.

ISSUE 2: Should the Commission direct staff to administratively deny incomplete or inaccurate telecommunications applications in the future in the manner consistent with proposed Section 2.07.C.20 of the Administrative Procedures Manual (APM)?

RECOMMENDATION: Yes. The Commission should direct staff to administratively deny all incomplete or inaccurate telecommunications applications in the future in the manner consistent with proposed Section 2.07.C.20 of the APM. If the Commission approves staff's recommendation in Issue 2, Section 2.07.C.20 of the APM should be updated as reflected in Attachment A. (Pruitt)

STAFF ANALYSIS: Although it is not common practice that Commission staff request administrative authority at an agenda conference, staff believes that it is appropriate for this recommendation.

In Docket No. 990546-TP, Order No. PSC-01-1335-PAA-TP, issued June 18, 2001, the Commission granted staff the authority to administratively approve intraLATA toll dialing parity plans and amended Section 2.07 of the APM for that purpose. In Docket No. 020353-TP, Order No. PSC-02-1174-FOF-TP, issued August 28, 2002, the Commission gave staff administrative authority to acknowledge adoption of agreements under FCC approved merger conditions and amended Section 2.07 of the APM.

In 2002, the Division of Competitive Markets and Enforcement received 72 applications for pay telephone service, 65 for alternative local exchange service, 6 for shared tenant service, and 3 for alternative access vendor service. Staff estimates that 95% of the applications were complete and had few inaccuracies.

Staff is unsure how many applications for certificates will be incomplete or inaccurate in the future; however, those applications can still be processed with the cooperation of the companies. Only in a few cases where the companies ignore staff's certified letters, is it impossible to process the applications.

Rule 25-4.043, Florida Administrative Code, requires telecommunications companies to respond to Commission staff inquiries with 15 days. The attached proposed amendment to the APM tracks the Rule by requiring the applicant to respond to staff's certified letter within 15 days.

DOCKET NO. 021181-TC
DATE: JUNE 5, 2003

Staff recommends that the Commission direct it to administratively deny future applications from companies that ignore staff's certified letters for additional information or corrections.

Staff also proposes that in order to implement the procedure, the Commission approve the proposed amendment to the Administrative Procedures Manual shown in Attachment A of this recommendation.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest to Issue 1 within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Teitzman)

STAFF ANALYSIS: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.

ATTACHMENT A

2.07.C.20

The Division of Competitive Markets and Enforcement and the Office of the General Counsel may deny an application to provide pay telephone service, competitive local exchange telecommunications service, alternative access vendor service, or shared tenant service if staff finds the application is incomplete or inaccurate, subject to the following conditions:

- a. Staff shall send a certified letter to the applicant requesting completion and/or correction of the application.
- b. The applicant does not respond within 15 days.

The docket shall be closed upon issuance of an administrative order.