

State of Florida



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-

DATE: April 2, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Corbari) *HC*
Office of Consumer Assistance and Outreach (Hicks) *PH*
Office of Telecommunications (Casey) *AK*

RE: Docket No. 140223-TC – Initiation of show cause proceedings against Florida Public Telephone Company for apparent violation of Section 364.335(2), F.S., Application for Certificate of Authority, Section 364.3375(2), F.S., Pay Telephone Service Providers, Rule 25-4.0051, F.A.C., Current Certificate Holder Information, and Rule 25-22.032(6)(b), F.A.C., Customer Complaints.

AGENDA: 04/16/15 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

RECEIVED-FPSC
15 APR -2 AM 11:13
COMMISSION
CLERK

Case Background

Staff opened Docket No. 140223-TC to initiate show cause proceedings against Florida Public Telephone Company (Company) for apparent violations of Florida Statutes and Commission rules and regulations in failing to: maintain operable pay telephones, reply to customer complaints, maintain current contact information with the Commission, and maintain current corporation status with the Florida Secretary of State. The number of Florida Public Telephone Company payphones declined from 440 payphones to 39 payphones over the past six years. The Company reported \$8,836 of net revenue in 2014 for the 39 payphones the Company owns.

On January 14, 2015, the Commission issued Order No. PSC-15-0048-SC-TC¹ (Show Cause Order), ordering the Company to show cause in writing within 21 days of the issuance of the Order why it should not be penalized \$2,000.00 or its Pay Telephone Certificate No. 5108 cancelled for apparent violations of Section 364.335(2), F.S., Section 364.3375(2), F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032(6)(b), F.A.C. The Company received the Commission's Show Cause Order on January 20, 2015.² Pursuant to the Show Cause Order, the Company's response was due on February 4, 2015. On February 11, 2015, the Commission received the Company's response to the Show Cause Order, wherein the Company apologized for and acknowledged its failures to comply with Commission rules and statutes and pleaded that the Commission not assess the \$2,000.00 penalty.³

The Commission has jurisdiction pursuant to Chapter 364, F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032, F.A.C.

¹ See Order No. PSC-15-0048-SC-TC, issued January 14, 2015, in Docket No. 140223-TC, In re: Initiation of show cause proceedings against Florida Public Telephone Company for apparent violation of Section 364.335(2), F.S., Application for Certificate of Authority, Section 364.3375(2), F.S., Pay Telephone Service Providers, Rule 25-4.0051, F.A.C., Current Certificate Holder Information, and Rule 25-22.032(6)(b), F.A.C., Customer Complaints.

² See Document No. 00516-15, in Docket No. 140223-TC, Copy of Certified Return Receipt, signed on January 20, 2015, evidencing delivery of Order No. PSC-15-0048-SC-TC.

³ See Document No. 00914-15, in Docket No. 140223-TC, Letter from Florida Public Telephone Company, dated February 9, 2015, attached hereto as Attachment A.

Discussion of Issues

Issue 1: Should Florida Public Telephone Company's response to Order No. PSC-15-0048-SC-TC be dismissed, Order No. PSC-15-0048-SC-TC finalized, and Florida Public Telephone Company penalized \$2,000.00 or its Pay Telephone Certificate No. 5108 cancelled for its apparent violations of Sections 364.335(2) and 364.3375(2), F.S., and Rules 25-4.0051 and 25-22.032(6)(b), F.A.C.?

Recommendation: Yes. Florida Public Telephone Company's response to Order No. PSC-15-0048-SC-TC should be dismissed, Order No. PSC-15-0048-SC-TC should be finalized, and the Company should be penalized \$2,000.00 for its apparent violations of Sections 364.335(2) and 364.3375(2), F.S., and Rules 25-4.0051 and 25-22.032(6)(b), F.A.C. Florida Public Telephone Company should be required to remit a penalty in the amount of \$2,000.00 to the Commission within fourteen (14) days from the date of the Commission's Final Order or its Certificate No. 5108 will be canceled. The Company should identify the docket number and company name with its penalty payment, and the Commission should forward the penalty to the Florida Department of Financial Services for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, F.S. (Corbari, Casey, Hicks)

Staff Analysis:

Pursuant to Order No. PSC-15-0048-SC-TC, Florida Public Telephone Company was ordered to show cause why it should not be penalized \$2,000.00, or its Pay Telephone Certificate cancelled for apparent violations of Section 364.335(2), F.S., Section 364.3375(2), F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032(6)(b), F.A.C.⁴ In addition, the Show Cause Order provided that the Company's failure to file a timely response would constitute an admission of the facts and waiver of its right to a hearing on the matter, and that the \$2,000.00 penalty would be deemed assessed and its Certificate No. 5108 cancelled.⁵

The Company's response was neither timely filed, nor substantially complies with the requirements of the Commission's Show Cause Order and Rule 28-106.2015, F.A.C. Section 120.569(2)(c), F.S., which addresses decisions affecting substantial interests, provides:

[u]pon receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed.

⁴ See Order No. PSC-15-0048-SC-TC, at p. 7.

⁵ Id.

The Company was required to respond to the Commission's Show Cause Order by February 4, 2015.⁶ The Company's written response, dated February 9, 2015, was not received by the Commission until February 11, 2015, and was, therefore, untimely.⁷ A copy of the Company's response is attached hereto as Attachment A.

In addition to being untimely, the Company's response does not substantially comply with the requirements of the Order or Rule 28-106.2015, F.A.C. Pursuant to the Commission's Show Cause Order, the Company was required to assert "specific allegations of fact and law . . . that raises material questions of fact and make a request for hearing pursuant to Sections 120.569 and 120.57, F.S.,"⁸ The requirements for a written response in an agency enforcement or disciplinary proceeding are contained in Rule 28-106.2015(5), F.A.C. Subsection (5)(c) of Rule 28-106.2015, F.A.C., reiterates that a response must contain "[a] statement requesting an administrative hearing identifying those material facts that are in dispute. ..." The Company's response neither makes a request for hearing, nor identifies any facts that are in dispute. In fact, the Company's response appears to acknowledge its failures to comply with Commission rules and statutes for which it apologizes, and pleads that the Commission not assess the \$2,000.00 penalty.⁹

In failing to timely respond to Order No. PSC-15-0048-SC-TC, the factual allegations of the violations alleged in the Order should be deemed admitted, the \$2,000.00 penalty for the violations of Sections 364.335(2) and 364.3375(2), F.S., and Rules 25-4.0051 and 25-22.032(6)(b), F.A.C., deemed assessed, and the Order finalized. In addition, the Company should be required to remit a penalty in the amount of \$2,000.00 to the Commission within fourteen (14) days from the date of the Commission's Final Order or its Pay Telephone Certificate No. 5108 will be canceled. Florida Public Telephone Company should identify the docket number and company name with its penalty payment, and the Commission should forward the penalty to the Florida Department of Financial Services for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, F.S.

⁶ Id. at p. 9.

⁷ Staff would note that it does not believe the Company's neglect of business operations due to financial hardship constitutes excusable neglect for failing to comply with Commission rules or responding to Commission orders. Excusable neglect is defined as "[a] failure – which the law will excuse – to take some proper step at the proper time) esp. in neglecting to answer a lawsuit) not because of the party's own carelessness, inattention, or willful disregard of the court's process, but because of some unexpected or unavoidable hindrance or accident [...]" Black's Law Dictionary, Garner, 7th ed., at p. 1055; See also, Order No. PSC-06-1007-FOF-TL, issued December 6, 2006, in Docket No. 050194-EL, In re: Complaint by Florida BellSouth customers who paid fees to BellSouth Telecommunications, Inc. related to Miami-Dade County Ordinance Section 21-44 ("Manhole Ordinance") and request that Florida Public Service Commission order BellSouth to comply with Section A.2.4.6 of General Subscriber Service Tariff and refund all fees collected in violation thereof., at p. 4.

⁸ Order No. PSC-15-0048-SC-TC, at p. 7.

⁹ See Attachment A.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1, this docket should be closed administratively upon receipt of Florida Public Telephone Company's \$2,000.00 penalty. Should the Company fail to remit the \$2,000.00 penalty, its Pay Telephone Certificate No. 5108 should be cancelled and the docket administratively closed. (Corbari)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed administratively upon receipt of Florida Public Telephone Company's \$2,000.00 penalty. Should the Company fail to remit the \$2,000.00, its Pay Telephone Certificate No. 5108 should be cancelled and the docket administratively closed.

FILED FEB 11, 2015
DOCUMENT NO. 00914-15
FPSC - COMMISSION CLERK

Member
Florida Public
Telecommunications
Association



Member
American Public
Communications
Council, Inc.

FLORIDA PUBLIC TELEPHONE COMPANY

220 East Sixth Street • Jacksonville, FL 32206 • (904) 350-9123 • Fax (904) 356-5394

February 9, 2015

Florida Public Service Commission
2540 Shumard Oak Boulevard
Jacksonville, FL 32399-0850

Re: Docket No. 140223-TC
Order No. PSC-15-0048-SC-TC
Issued: January 14, 2015

RECEIVED FPSC
15 FEB 11 AM 9:03
COMMISSION
CLERK

Gentlemen:

First of all, I must apologize for being so late in responding to the above proceeding. Due to the proliferation of cell phones, my company has been teetering on the edge of bankruptcy, employees have not been working, I have been working a second job, and some of the things that were supposed to have been done were overlooked. Mail has been unopened and responses have not been made. This was a very poor way to run a business, and I assure you that this will not be allowed to continue.

In response to the original complaints, I wish to assure you that although we may have failed to insure that you have received timely notification, the inoperable payphones were removed last summer.

In the case of your difficulty in reaching us by telephone or fax, I wish to furnish the following numbers for your use:

Telephone (904) 305-3733
Fax (904) 887-3772

In the case of our corporate registration needing to be updated, I was unaware that it had expired, and I am taking immediate actions to insure that it is being updated now.

Again, I apologize for not being more responsive in these matters. A fine of \$2000 would put us out of business, so I am asking you for mercy on the grounds that this will never happen again.

Sincerely,

David Swearingen
President