

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.

DOCKET NO. 140223-TC
ORDER NO. PSC-15-0157-FOF-TC
ISSUED: April 23, 2015

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
JULIE I. BROWN
JIMMY PATRONIS

ORDER FINALIZING SHOW CAUSE

BY THE COMMISSION:

CASE BACKGROUND

Our 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 Company currently operates 39 pay telephones, having declined from 440 over the past six years. In 2014, the Company reported net revenue of \$8,836 for the 39 payphones it owns.

On January 14, 2015, we 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 our 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, we 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 we not assess the \$2,000.00 penalty.³

We have jurisdiction pursuant to Chapter 364, F.S., Rule 25-4.0051, F.A.C., and Rule 25-22.032, F.A.C.

DECISION

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

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.

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.

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

⁵ Id.

We find that the Company's response to our Show Cause Order was not timely filed. The Show Cause Order was received by the Company on January 20, 2015.⁶ The Company was required to respond to our Show Cause Order by February 4, 2015.⁷ The Company's written response dated February 9, 2015, and received by the Commission until February 11, 2015, and is, therefore, untimely.⁸

In addition to being untimely, the Company's response does not substantially comply with the requirements of our Show Cause Order or Rule 28-106.2015, F.A.C. Pursuant to our 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., . . ." ⁹ 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 our rules and statutes for which it apologizes, and pleads that we not assess the \$2,000.00 penalty.¹⁰

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Public Telephone Company's response to Order No. PSC-150048-SC-TC was not timely filed and did not substantially comply with the requirements outlined in Order No. PSC-150048-SC-TC or Rule 28-106.2015, F.A.C., and is hereby dismissed. It is further,

ORDERED that Order No. PSC-15-0048-SC-TC is final. The factual allegations of the violations alleged in Order No. PSC-15-0048-SC-TC are admitted and Florida Public Telephone Company assessed a \$2,000.00 penalty for its 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. It is further,

⁶ See *supra* note 3.

⁷ *Id.* at p. 9.

⁸ We do not believe the Company's neglect of business operations due to financial hardship constitutes excusable neglect for failing to comply with Commission rules and statutes 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.

⁹ Order No. PSC-15-0048-SC-TC, at p. 7.

¹⁰ See Attachment A.

ORDER NO. PSC-15-0157-FOF-TC

DOCKET NO. 140223-TC

PAGE 4

ORDERED that Florida Public Telephone Company be required to remit the \$2,000.00 penalty to the Commission within fourteen (14) days from the date of this Order and shall identify the docket number and company name with its penalty payment. It is further,

ORDERED that this docket shall be administratively closed upon receipt of Florida Public Telephone Company's \$2,000.00 penalty payment. It is further,

ORDERED that Commission shall forward the penalty received from Florida Public Telephone Company to the Florida Department of Financial Services for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, F.S. It is further,

ORDERED that, should Florida Public Telephone Company fail to remit the \$2,000.00 penalty within fourteen (14) days of this Order, Florida Public Telephone Company's Pay Telephone Certificate No. 5108 shall be canceled and this docket administratively closed.

By ORDER of the Florida Public Service Commission this 23rd day of April, 2015.



CARLOTTA S. STAUFFER

Commission Clerk

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

(850) 413-6770

www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KFC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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