

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: September 23, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Curry)
Office of the General Counsel (Rojas)
Division of Regulatory Compliance & Consumer Assistance (Vandiver)

RE: Docket No. 040215-TC – Compliance investigation of U.S. Paytel Optima, L.L.C. for apparent violation of Rule 25-4.019, F.A.C., Records and Reports in General.

AGENDA: 10/05/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040215.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission accept U.S. Paytel Optima, L.L.C.'s proposed settlement offer of \$2,500 to resolve the apparent violation of Rule 25-4.019, Florida Administrative Code, Records and Reports in General?

Recommendation: Yes. (Curry, Vandiver, Rojas)

Staff Analysis: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a penalty or cancel a certificate if a company refuses to comply with the Commission's rules. Rule 25-24.505(1), Florida Administrative Code, Scope, incorporates Rule 25-4.019, Florida Administrative Code, by reference into rules applicable to pay telephone service companies. Rule 25-4.019(1), Florida Administrative Code, Records and Reports in General, states:

Each utility shall furnish to the Commission at such times and in such form as the Commission may require the results of any required tests and summaries of any required records. The utility

shall also furnish the Commission with any information concerning the utility's facilities or operations which the Commission may reasonably request and require. All such data, unless otherwise specified, shall be consistent with and reconcilable with the utility's annual report to the Commission.

U.S. Paytel Optima, L.L.C. (U.S. Paytel) is a certificated pay telephone service provider based in Omaha, Nebraska that provides pay telephone services in Florida. The company reported to the Commission gross intrastate revenue of \$201,246.47 on its Regulatory Assessment Fee (RAF) Return for the calendar year 2002 and paid a RAF in the amount of \$168.94. On September 5, 2003, staff notified U.S. Paytel, via first class mail, that the company had been randomly selected for a RAF audit of its 2002 RAF Return. Between December 1, 2003, and February 3, 2004, staff requested several times, via telephone, facsimile, first class mail, and certified mail, that U.S. Paytel provide documentation substantiating the intrastate revenues reported to the Commission on its 2002 Pay Telephone Service Provider RAF Return.

On March 11, 2004, after not receiving the requested information from the company, staff opened this docket to recommend that the Commission impose a penalty of \$10,000 upon U.S. Paytel for its apparent violation of Rule 25-4.019, Florida Administrative Code. The Commission voted to impose staff's recommended penalty of \$10,000 against U.S. Paytel on April 20, 2004. On May 28, 2004, staff received a letter from Mr. Ed Otto of U.S. Paytel protesting the imposed penalty. After receiving the letter, staff later contacted Mr. Otto and suggested that he submit the requested information along with a proposed settlement offer to resolve the company's apparent rule violation.

Between May 28, 2004, and September 9, 2004, staff communicated with Mr. Otto, via telephone, facsimile, and first class mail, regarding this issue. U.S. Paytel provided the requested information to staff on August 17, 2004. On August 31, 2004, staff determined that the information submitted by the company was sufficient to complete the RAF audit. U.S. Paytel submitted a check in the amount of \$2,500 as a proposed settlement offer to resolve its apparent violation of Rule 25-4.019, Florida Administrative Code, on September 13, 2004. The payment was forwarded to the Division of Financial Services to be deposited into the General Revenue Fund.

U.S. Paytel has provided the information requested to complete the RAF audit. U.S. Paytel has also submitted a check in the amount of \$2,500 as a proposed settlement offer to resolve its apparent rule violation. The monetary amount of U.S. Paytel's proposed settlement is consistent with similar proposals approved by the Commission in previous dockets. Therefore, staff believes that U.S. Paytel has taken the necessary actions to correct the problems causing the apparent violation of Rule 25-4.019, Florida Administrative Code, and thereby recommends that the Commission accept the company's settlement proposal.

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Issue 2: Should this docket be closed?

Recommendation: Yes. (Rojas)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed as there are no other issues that need to be addressed by the Commission.