

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 921250-TI
proceedings against CHERRY) ORDER NO. PSC-93-0908-FOF-TI
PAYMENT SYSTEMS, INC. d/b/a) ISSUED: June 15, 1993
CHERRY COMMUNICATIONS for)
violation of Rule 25-4.118,)
F.A.C., Interexchange Carrier)
Selection.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON

ORDER REJECTING SETTLEMENT OFFER

BY THE COMMISSION:

Cherry Payment Systems, d/b/a Cherry Communications (Cherry or the Company) is a switchless reseller of the volume discounted outbound services of other interexchange carriers. The Company received its certificate to provide interexchange telecommunications service on December 4, 1992. Only seven days later, on December 11, 1992, this docket was opened because of our concern that nine slamming complaints had been filed against the Company within a week of its certification. On February 22, 1993, we issued Order No. PSC-93-0269-FOF-TI, initiating show cause proceedings against Cherry. In its response to the show cause Order, the Company stated that new procedures had been implemented to decrease complaints. However, we have not seen a reduction in complaints; to the contrary, complaints appear to have increased. On May 25, 1993, we received an offer of settlement from Cherry.

The matter before us involves, among other things, allegations of fraud against Florida customers, slamming, unethical marketing, pre-certification provision of telecommunications service, failure to adequately respond to our staff's inquiries, questionable corporate structure, and the prior conviction of two of the Company's principals of felonies (one was convicted of mail and wire fraud, while the other was convicted of an attempted violation of the Hobbs Act which is a federal anti-racketeering act). Upon review, we find that it is not appropriate to accept the Company's settlement offer at this time.

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Therefore, it is

ORDERED by the Florida Public Service Commission that we do not accept Cherry Payment Systems d/b/a Cherry Communications' May 25, 1993 offer of settlement. It is further

ORDERED that this Docket shall remain open for the scheduled hearing.

By ORDER of the Florida Public Service Commission this 15th day of June, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

CWM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida

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Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.