

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause) DOCKET NO.: 880731-TC
 proceedings against Florida) ORDER NO. 21161
 Telesystems, Inc. for failure to) ISSUED: 5-4-89
 comply with Commission Order No.)
 18904 and Rule 25-24.512, F.A.C.)

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER INITIATING SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

Florida Telesystems, Inc is hereby directed to show cause why it should not be fined ten thousand dollars (\$10,000) for its violation of Rule 25-24.512, Florida Administrative Code and its failure to comply with Commission Order No. 18904.

INTRODUCTION

We note that as a result of our action in the above-referenced docket we will issue two separate orders. In this order, we will address our decision to require that Florida Telesystems, Inc. (Telesystems) show cause, in writing, why it should not be fined ten thousand dollars (\$10,000) for failure to comply with our rules and order. In our second order to be released concurrently with this one, we shall announce our intention to approve Telesystems' application for a certificate of public convenience and necessity to provide private pay telephone service, as well as our decision to cancel Certificate No. 86, held by Florida Tel & Tel Coin Telephones, Inc. (Florida Tel).

BACKGROUND

By Order No. 14396, issued on June 12, 1985, in Docket No. 850073-TC, we approved Florida Tel's application for authority to provide private pay telephone service. Accordingly, Florida Tel was issued Certificate No. 86.

In September, 1987, in response to a consumer complaint, the Commission notified Telesystems that its pay telephones were in violation of Commission rules. Additionally, the Commission informed Telesystems that its preliminary investigation into the complaint revealed that Telesystems had obtained its local exchange access lines under Certificate No. 86 held by Florida Tel. A Telesystems' representative informed the Commission that Telesystems had acquired Florida Tel and that the company's failure to request a transfer of the certificate was an oversight between its attorneys in Miami and Tallahassee.

On October 7, 1987, Docket No. 877045-TP was assigned to Telesystems' request for transfer of Florida Tel's certificate. The Commission propounded interrogatories to Telesystems and met with its local attorney to obtain an understanding of the

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interrelationship between Florida Tel and Telesystems. We learned that it was actually Florida Tel that was operating the pay telephone service; however, it was operating under the Telesystems' name. Additionally, we were told that both companies were owned by the stockholders of Florida Tel. From what we learned, it appeared as if what Florida Tel wanted to do was to continue to operate, but it wanted to offer service under the name Telesystems. Therefore, Florida Tel was instructed to withdraw Telesystems application for transfer and submit the appropriate request for a name change.

In January, 1988, Florida Tel's attorney filed a notice withdrawing the transfer application and stated that "Florida Tel intended to use the name Telesystems in certain instances in its dealings with the public." By Order No. 18904, issued February 22, 1988, we approved the withdrawal of the transfer application and directed Florida Tel to obtain authority to operate under the name Telesystems.

However, on April 19, 1988, we were informed that Telesystems intended to seek a separate certificate. On May 25, 1988, Docket No. 880731-TC was opened for the purpose of initiating show cause proceedings against Telesystems for its failure to obtain authority to operate under the Telesystems' name in compliance with Order No. 18904, and its improper use of a certificate to provide pay telephone service in violation of Rule 25-24.512, Florida Administrative Code.

The Commission has engaged in various forms of discovery in an attempt to discern what has taken place between Florida Tel and Telesystems. On August 5, 1988, Telesystems responded to our interrogatories, and on October 19, 1988, we deposed an officer of both companies.

DISCUSSION

Rule 25-24.512(1), Florida Administrative Code, provides that no certificate of public convenience and necessity which authorizes pay telephone service, may be sold or transferred by the holder to another without prior Commission approval. Further, the rule states that no certificate shall be used as collateral for any purpose. Telesystems has failed to comply with this rule. The company's responses to our interrogatories indicate that Telesystems has been unlawfully using Florida Tel's certificate to obtain access lines for its pay telephones since March, 1987. Additionally, Commission service evaluations of Telesystems' telephones have resulted in unsatisfactory reports and an audit of the company's regulatory assessment fees indicate that the company underreported its pay telephone intrastate revenues for 1987.

We believe that the company has disregarded our rules and has failed to operate in a prudent manner. Section 364.285, Florida Statutes, gives us authority to impose a fine of up to five thousand dollars (\$5,000) per day for violation of Commission rules. Accordingly, Telesystems is directed to show cause, in writing, why a penalty of \$5,000 should not be assessed against it for its failure to comply with our rules.

We will also require the company to show cause, in writing, why a penalty of \$5,000 should not be assessed against it for its failure to comply with Order No. 18904. In that Order we allowed Florida Tel to withdraw its application to transfer its certificate to Telesystems, but directed that the company submit the appropriate request to allow it to operate under the name Telesystems. That Order was issued on February 2, 1988. We never received the appropriate request for a name change. Furthermore,

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in January, 1989, we learned that Telesystems was using various doing-business-as (d/b/a) names. Specifically, we discovered through a spot-check of the company's billing records that Telesystems was using names such as Florida Telesystems d/b/a Faro Blanc. Telesystems did not seek our approval to identify itself with a d/b/a listing. Therefore, due to the company's apparent disregard of our Order, it is directed to show cause in writing why a fine of \$5,000 should not be imposed for violating Order No. 18904.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Telesystems, Inc. shall show cause, in writing, why a penalty of \$5,000 should not be assessed against it for its failure to comply with Rule 25-24.512(1), Florida Administrative Code. It is further

ORDERED that Florida Telesystems shall show cause, in writing, why a penalty of \$5,000 should not be assessed against it for its failure to comply with Order No. 18904. It is further

ORDERED that the utility's written response to this show cause order must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 24, 1989. It is further

ORDERED that any statements by the utility must contain specific statements of law and fact. It is further

ORDERED that upon receipt of a response as outlined above, and upon the company's request, further proceedings will be scheduled by the Commission, at which time the company will have an opportunity to contest the violations alleged herein. It is further

ORDERED that the utility's failure to file a written response within the prescribed time will constitute an admission of noncompliance and a waiver of any right to a hearing. It is further

ORDERED that this docket remain open.

By ORDER of the Florida Public Service Commission
this 4th day of MAY, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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8978G

by: Kay Flynn
Chief, Bureau of Records

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

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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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are adversely affected by the action proposed by this order may file a petition for a formal proceeding pursuant to Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 24, 1989. Failure to respond by May 24, 1989, shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on May 25, 1989.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date of the default date set forth in 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.