

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Pay Tele Communications, Inc. for violation of Rules 25-24.520(1)(a) and (b), F.A.C., Reporting Requirements, and 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 971257-TC
ORDER NO. PSC-98-0173-PCO-TC
ISSUED: January 28, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE

BY THE COMMISSION:

I. BACKGROUND

Pay Tele Communications, Inc. (Pay Tele) is a provider of pay telephone service. We granted Pay Tele permission to provide pay telephone service on October 1, 1993. Pay Tele holds pay telephone certificate number 3451. According to local exchange company records, Pay Tele owns and operates four pay telephones in Florida. Pay Tele reported gross operating revenues of \$10,059.57 on its Regulatory Assessment Fee Return for the period January 1, 1996, through December 31, 1996. As a provider of pay telephone service in Florida, Pay Tele is subject to the rules and regulations of this Commission.

On April 14, 1997, our staff completed a service evaluation on a payphone owned by Pay Tele located at 556 E. SR 44 in Wildwood, Florida. The phone had more than 10 violations of our rules, including: no certificate name, pay telephone number, or address displayed; calls could not be made or received; no number displayed for refunds or repairs; no directory was available; 911 center

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could not verify street address of the phone; no LEC disclaimer; and no clear and accurate dialing instructions displayed.

On April 23, 1997, staff mailed a letter along with a Service Evaluation Correction Form to Pay Tele requesting an explanation of what action would be taken to correct the violations. Staff requested a response within 15 days. Staff did not receive a response from Pay Tele after the 15 day deadline and mailed a certified letter to the company on May 9, 1997. The return card was signed by C. Perotka, but, to date, no response has been received from the company. Staff called the phone number in the Master Commission Directory May 30, June 16, and June 23, 1997, and left messages each time. On June 30, 1997, staff did reach Mr. Perotka by phone, and he said that he would respond. Then staff called on July 10, July 22, and July 28, 1997, and August 1, 1997, and left messages. On August 7, 1997, an answering service took staff's message for Pay Tele. To date, staff has not received a response. Presently, the number for Pay Tele rings with no answer. Pay Tele also owns a phone at 5565 W. Irlo Bronson Memorial Highway in Kissimmee that is not in service.

II. ALLEGED VIOLATIONS

Rule 25-24.515(3)(5)(8) and (11), Florida Administrative Code, state in pertinent part:

Each telephone station shall permit access to the universal telephone number "911" where operable...without requiring the use of a coin, paper money, or a credit card...shall be equipped with a legible sign, card, or plate of reasonable permanence which shall identify the following: telephone number and location address of such station, name of the certificate holder and the party responsible for repairs and refunds, address of responsible party, clear dialing instructions....a statement that the phone is not maintained by the local exchange company ...shall allow incoming calls to be received...where there are fewer than three telephones located in a group, a directory for the entire local calling area shall be maintained at each station.

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Rule 25-24.520(1)(a) and (b), Florida Administrative Code, state in pertinent part:

Each pay telephone service company shall file with the Commission's Division of Communications updated information for the following items within 10 days after a change occurs:

(a) The street address of the certificate holder including number, street, name, city, state and zip code, and the mailing address if it differs from the street address also. (b) Name, title, and phone number of the individual responsible for contact with the Commission.

In addition, Rule 25-4.043, Florida Administrative Code, states in pertinent part:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Staff attempted unsuccessfully to contact Pay Tele by calling the number listed in the Master Commission Directory and by mailing regular and certified letters to the company. To date, this provider has not responded.

We find that a show cause order is warranted in this case because Pay Tele's violations of our pay telephone service rules, failure to respond to our staff's inquiries, and violations of our reporting requirements. We believe that fines of \$750 for violation of our rules, \$1,500 for not responding to staff's inquiries, and a fine of \$1,000 for not reporting a new phone number and address are appropriate. If Pay Tele fails to respond to this show cause order, the fines should be deemed assessed. If Pay Tele does not pay the fines within five (5) business days of the expiration of the show cause response period, Pay Tele's certificate should be cancelled.

Under Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any unlawful rule or order of the Commission, or any

provision of Chapter 364, Florida Statutes, or revoke any certificate issued by it for any such violation. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

We believe that Pay Tele's apparent conduct in violating pay telephone service rules, failing to respond to staff inquiries and failing to file updated information within 10 days after a change occurs has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation Into The Proper Application of Rule 25-24.003, Florida Administrative Code, Relating To Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating, " In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, intentional acts, such as Pay Tele's conduct at issue here, would meet the standard for a "willful violation."

III. CONCLUSION

Accordingly, we hereby require Pay Tele to show cause in writing within 20 days of the issuance of this Order why it should not be fined \$750 for apparent violation of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, \$1,500 for violation of Rule 25-24.520, Florida Administrative Code, Reporting Requirements and \$1,000 for violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries or have its certificate cancelled. If Pay Tele fails to respond to this Order, the fines will be deemed assessed. If the fines are not paid within five business days of the expiration of the show cause response period, Pay Tele's certificate shall be cancelled. If the fines are paid, they should be forwarded to the Office of the Comptroller for deposit in Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Pay Tele Communications, Inc. show cause, in writing, why it should not be fined or have its certificate cancelled for apparent violations of Rule 25-24.515, 25-24.520, and 25-4.043, Florida Administrative Code. It is further

ORDERED that Pay Tele Communications, Inc.'s response shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order in the manner and by the date set forth in the Notice of Further Proceedings or Judicial Review section of this Order shall constitute an admission of the violations described in the body of this Order, and waiver of a right to a hearing.

By ORDER of the Florida Public Service Commission this 28th day of January, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a), and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 17, 1998.

Failure to respond within the time set forth above 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(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

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 wastewater 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 this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.