

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of Show Cause Proceedings against Supra Telecommunications & Information Systems for violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and violation of Rule 25-24.820, Revocation of a Certificate .

DOCKET NO. 971527-TX
ORDER NO. PSC-98-0279-PCO-TX
ISSUED: February 12, 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:

BACKGROUND

Supra Telecommunications and Information Systems (Supra) was granted Alternative Local Exchange Certificate No. 4861 on June 21, 1997. On September 3, 1997, the Commission staff received two complaints alleging unauthorized switching of local telephone service. By October 21, 1997, there were 63 similar complaints. The complaints primarily involved unauthorized switching of local telephone services and misleading solicitation practices. As of January 8, 1998, the Commission reported 201 complaints relating to unauthorized switching by Supra. Additionally, Supra had failed to respond to Commission staff inquiries regarding the complaints.

Supra representatives met with staff and tendered a settlement proposal. Although, we are not approving the settlement proposal, we believe that Supra is committed to resolving this matter based on its representations to our staff and to us at the January 20, 1998, Agenda Conference. At this time, however, Supra has not

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adequately resolved all outstanding customer complaints or provided sufficient responses to the Commission regarding those complaints. We will, therefore, issue our show cause order at this time, with the understanding that we fully expect Supra to work with our staff to resolve all outstanding matters, including its solicitation practices.

SHOW CAUSE

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, requires that, "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." Supra either has failed to respond to or has responded in an untimely manner to numerous staff inquiries. Thus, we find that it appears that Supra has violated Rule 25-4.043, Florida Administrative Code.

Rule 25-24.820 (1)(a), Florida Administrative Code, provides for the revocation of a certificate for violation of the terms and conditions upon which the certificate was originally granted. Supra asserted in its application for certification that it possessed adequate managerial expertise to operate as an alternative local exchange carrier (ALEC.) We believe that the great number of complaints for alleged slamming and misleading solicitation violations received by this agency in a very short period of time constitutes evidence of an apparent lack of managerial capability to provide satisfactory ALEC service in Florida, an apparent violation of Rule 25-24.820(1)(a), Florida Administrative Code.

By Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our 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 lawful Commission rule or order, or any provision of Chapter 364, Florida Statutes. Utilities are charged with knowledge of our rules and statutes. Additionally, "[i]t is a 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). In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order it to show cause why it should not be

fined, stating that, "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule."

We find that Supra's apparent conduct in unauthorized switching of local telecommunications services and failing to timely respond to staff inquiries has been "willful" in the sense intended by Section 364.285, Florida Statutes, and thus, that conduct rises to a level warranting that a show cause order be issued. Therefore, we order Supra to show cause in writing within 20 days of the issuance of this Order why it should not be fined in the amount of \$55,500 for apparent violation of Rule 25-4.043, Florida Administrative Code, and \$402,000 for apparent violation of Rule 25-24.820(1)(a), Florida Administrative Code. Pursuant to Section 364.285, Florida Statutes, any payment of fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Supra Telecommunications & Information Systems shall show cause, in writing, within 20 days of the issuance of this Order why it should not be fined \$55,500 for apparent violation of Rule 25-4.043, Florida Administrative Code, and \$402,000 for apparent violation of Rule 25-24.820(1)(a), Florida Administrative Code, or have its Certificate No. 4861 cancelled. It is further

ORDERED that any response to the Order to Show Cause filed by Supra Telecommunications & Information Systems shall contain specific allegations of fact and law. It is further

ORDERED that any response to the Order to Show Cause shall be filed with the Director of the Division of Records and Reporting within 20 days of issuance of this Order. It is further

ORDERED that upon receipt of Supra Telecommunications & Information Systems' response to the Order to Show Cause, and upon its request for a hearing, further proceedings will be scheduled by the Commission, at which time Supra Telecommunications & Information Systems will have an opportunity to contest the allegations in the body of this Order. It is further

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ORDERED that if Supra Telecommunications & Information Systems fails to file a timely response to the Order to Show Cause, such failure shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that if Supra Telecommunications & Information Systems fails to respond to this Order within 20 days of its issuance date, the fine shall be deemed assessed. It is further

ORDERED that the Commission shall forward any fine payment received to the Office of the Comptroller for deposit in the Florida General Revenue Fund, pursuant to Section 364.295, Florida Statutes. It is further

ORDERED that if Supra Telecommunications & Information Systems fails to respond to this Order and does not pay the fine within (5) business days after the expiration of the show cause response period, its certificate shall be cancelled. It is further

ORDERED that in the event Supra Telecommunications & Information Systems' certificate is cancelled, all certificated local exchange companies shall discontinue providing local exchange telecommunications service to Supra Telecommunications & Information Systems for resale. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 12th day of February, 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 March 4, 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.