

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

DATE: NOVEMBER 4, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (STERN) *MKS NK*
DIVISION OF TELECOMMUNICATIONS (ISLER) *Pij RW*

RE: DOCKET NO. 991471-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST J AND L COMMUNICATIONS FOR VIOLATION OF RULES 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES, AND 25-24.515(9)(A), (12), AND (18), F.A.C., PAY TELEPHONE SERVICE

AGENDA: 11/16/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\991471.RCM

CASE BACKGROUND

- **06/11/93** - J and L Communications (J and L, or the company) obtained Florida Public Service Commission PATS Certificate No. 3353.
- **03/15/99** - J and L reported no revenues on its 1998 regulatory assessment fee return.
- **04/15/99** - Staff evaluated pay telephone number (904) 241-9985 in Jacksonville.
- **05/05/99** - Staff mailed the company a letter, which informed it of the violations found and requested a response by May 20, 1999.

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- **05/24/99** - The company did not respond; therefore, staff mailed the company a certified letter and requested a response by June 8, 1999.
- **05/26/99** - The USPS returned the receipt, which showed the certified letter was signed for and delivered on this date.
- **06/24/99** - Staff called the telephone number listed in the Master Commission Directory for the company and left a message for a return call.
- **07/06/99** - Staff called the company again and left another message. On the same date, Ms. Sherry Carter returned staff's call and advised that she would mail the response to the service evaluation.
- **07/23/99** - Staff wrote the company regarding staff's concern with its name and requested a response by August 9, 1999.

SUMMARY OF VIOLATIONS

ISSUE NO.	VIOLATION	RECOMMENDATION
Issue 1	Rule 25-24.515(9)(a), (12), and (18), F.A.C., Pay Telephone Service	Fine \$3,000 or cancel certificate
Issue 2	Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries	Fine \$10,000

Staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order J and L Communications to show cause why it should not be fined \$3,000 or have Certificate No. 3353 canceled for apparent violation of Rule 25-24.515(9)(a), (12), and (18), Florida Administrative Code, Pay Telephone Service?

RECOMMENDATION: Yes, the Commission should order J and L to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have its certificate canceled or be fined \$3,000 for apparent violation of Rule 25-24.515(9)(a), (12), and (18), F.A.C. The company's response should contain specific allegations of fact or law. If J and L fails to respond to the show cause order and the fine is not paid within 10 business days after the 21 day show cause period, Certificate No. 3353 should be canceled. If the fine is paid, it should be remitted to the Commission to be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund, pursuant to Section 364.285, Florida Statutes. (Isler)

STAFF ANALYSIS: On April 15, 1999, during a routine service evaluation, staff found that the pay telephone located at 317 9th Avenue, Jacksonville, telephone number (904) 241-9985, was identified on the placard as being owned and operated by Alacrity Communications, Inc. A pay telephone certificate has not been issued in the name of Alacrity Communications, Inc. In addition to the phone not being correctly identified, staff found that 0- calls did not route to the authorized telecommunications company, and it was not wheelchair accessible.

Rule 25-24.515(9)(a), F.A.C.

Rule 25-24.515(9)(a), F.A.C., states:

(9) Except as provided in paragraph 9(c), each pay telephone station shall be equipped with a legible sign card, or plate of reasonable permanence which shall identify the following:

(a) The telephone number and location address of the pay telephone station, name and certificate number of the certificate holder, the party responsible for repairs and refunds, address of responsible party, free phone number of responsible party, clear dialing instructions

(including notice of the lack of availability of local or toll services), and the local coin rate.

The company complied with all requirements of the rule except for the name. After a response was not received from the company, on July 23, 1999, staff checked the Department of State (DOS), Division of Corporations' records and found that the fictitious name "J and L Communications" expired December 31, 1998. Staff then checked the name "Alacrity Communications, Inc." and found that it was not registered as a corporation or fictitious name. Staff wrote J and L on July 23 and explained that since its fictitious name had expired with DOS, the company needed to either have the fictitious name reinstated or cancel the J and L certificate and apply for a new certificate in the name of Alacrity Communications, Inc., after it had registered the new name with DOS. Although staff requested a response by August 9, the company has never responded.

Rule 25-24.515(12), F.A.C.

Rule 25-24.515(12), F.A.C., states:

(12) All 0- calls shall be routed to a telecommunications company that is authorized by the Commission to handle 0-calls. All other calls, including operator service calls, may be routed to the pay telephone provider's carrier of choice, unless the end user dials the appropriate access code for their carrier of choice, i.e., 950, 10XXX, 10XXXX, 101XXXX, and toll free access (e.g., 800, 877, and 888).

The payphone in question routed a 0- call to Opticom, which only holds an interexchange telecommunications certificate with the Commission. Since 0- calls can only be handled by a local exchange company or alternative local exchange company, the company is in apparent violation of this rule.

Rule 25-24.515(18), F.A.C.

This rule requires that pay telephone stations conform to Sections 4.28.8.4 and 4.29 of the American National Standards Accessible and Usable Buildings and Facilities, by the American National Standards Institute, Inc. (ANSI), which deals with wheelchair accessibility. According to the ANSI standards, the station must have a 54-inch height or less to the center of the

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coin slot or the highest operable part for side access or be 48 inches or less for front-only access. The pay station in question measured 63 inches in height. Therefore, it appears the pay station was nine (9) inches too high for side access.

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's 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).

Staff believes that J and L's conduct in providing pay telephone services in apparent violation of Commission Rule 25-24.515, Florida Administrative Code, 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 25-14.003, F.A.C., 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 that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as J and L's conduct at issue here, would meet the standard for a "willful violation."

Accordingly, it appears that J and L is in violation of the Commission's service standards established for pay telephone companies. Therefore, staff believes the Commission should order J and L to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$3,000 or have its certificate canceled for apparent violation of Rule 25-24.515(9)(a), (12), and (18), F.A.C. The company's response should contain specific allegations of fact or law. If J and L fails to respond to the show cause order, and the fine is not paid within 10 business days after the 21 day show cause period, Certificate No. 3353 should be canceled. If the fine is paid, it should be remitted to the Commission to be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund, pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should the Commission order J and L Communications to show cause why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. The Commission should order J and L to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact or law. If J and L fails to respond to the show cause order, the fine should be deemed assessed. If the fine is not paid within 10 business days after the 21 day show cause period, it should be forwarded to the Office of the Comptroller for collection. If the fine is paid, it should be remitted by the Commission to the Office of Comptroller for deposit in the State General Revenue Fund, pursuant to Section 364.285, Florida Statutes. (Isler)

STAFF ANALYSIS: Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries, states:

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 wrote the company on May 5, May 24 (certified letter), and July 23, 1999. Each letter requested a response within 15 days. In addition to the correspondence, staff called the company twice, June 24 and July 6, 1999. On July 6, Ms. Sherry Carter, a representative of J and L, returned staff's call and stated that the company would respond to the service evaluation performed on one of the company's pay telephones. Although the company has had ample opportunity, as of October 28, the company has not responded to staff's inquiries.

Accordingly, staff recommends that the Commission order J and L to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact or law. If J and L fails to respond to the show cause order, the fine should be deemed assessed. If the fine is not paid within 10 business days after the Order becomes final, it should be forwarded to the Office of the Comptroller for

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collection. If the fine is paid, it should be remitted by the Commission to the Office of Comptroller for deposit in the State General Revenue Fund, pursuant to Section 364.285, Florida Statutes.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, then J and L will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If staff's recommendation in Issue 2 is approved, then J and L will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed. If J and L timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If J and L does not respond to the show cause order, and the fines are not received within 10 business days after the expiration of the show cause response period, then J and L's certificate should be canceled for the violations cited in Issue 1 and the fine in Issue 2 should be imposed for the violation cited in Issue 2 and forwarded to the Comptroller's Office for collection. This docket can then be closed. (Stern)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then J and L will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If staff's recommendation in Issue 2 is approved, then J and L will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed. If J and L timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If J and L does not respond to the show cause order, and the fines are not received within 10 business days after the expiration of the show cause response period, then J and L's certificate should be canceled for the violations cited in Issue 1 and the fine in Issue 2 should be imposed for the violation cited in Issue 2 and forwarded to the Comptroller's Office for collection. This docket can then be closed.