

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Southern States Telephone, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 010213-TX
ORDER NO. PSC-01-1087-SC-TX
ISSUED: May 7, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER TO SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

On September 15, 1998, Southern States Telephone, Inc. (SSTI) was granted alternative local exchange company (ALEC) Certificate No. 5694. On February 9, 2000, SSTI reported \$26,343.00 in intrastate revenue for 1999. Five consumer complaints against SSTI were received between August 15, 2000 and August 31, 2000. The 2000 Regulatory Assessment Fee (RAF) form was mailed to SSTI on December 5, 2000.

On February 12, 2001, this docket was opened to initiate show cause proceedings against SSTI for apparent violation of Rules 25-4.043 and 25-4.0161, Florida Administrative Code. SSTI was notified on February 20, 2001, that it was delinquent in remitting RAFs. As of April 10, 2001, SSTI has neither responded to the complaints nor submitted its RAFs.

This Commission is vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285 and 364.336, Florida Statutes.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

SHOW CAUSE

Rule 25-4.043, Florida Administrative Code, 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.

SSTI was notified by facsimile of four of the five complaints. After receiving no response, late notices were sent to SSTI by facsimile. In one complaint, attempts were made to contact the company by calling Patrick Freeman, SSTI's liaison in our Master Commission Directory. He said he no longer works for SSTI. He informed us that SSTI was disconnected by BellSouth for non-payment and that another company was taking over the SSTI accounts and was working with BellSouth to restore their services. He said that Joe Kearney is SSTI's new liaison. Our attempts to contact Mr. Kearney were unsuccessful. As of February 14, 2001, we have been unable to get a response to this or any other complaint from SSTI.

By Section 364.285, Florida Statutes, this 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 this 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).

We find that the conduct of SSTI, by failing to respond to our inquiries, in apparent violation of Rule 25-4.043, 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, 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 the conduct of SSTI at issue here, would meet the standard for a "willful violation."

The fine amount is consistent with previous amounts used for recent similar violations in Docket Nos. 000034-TI and 000035-TI.

Based on the foregoing, because of SSTI's failure to respond to our inquiries for more than seven months, Southern States Telephone, Inc. is hereby ordered to show cause in writing within 21 days of the issuance of this Order why it should not be fined \$10,000 per violation, for a total of \$50,000, or have certificate number 5694 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code. SSTI's response shall contain specific allegations of fact and law. If SSTI fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing shall be deemed waived and the fine shall be deemed assessed. If the fine is not paid within 10 business days after the end of the 21-day response period, then, in lieu of the fine, certificate number 5694 shall be canceled administratively. If the fine is paid, it shall be remitted to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

Rule 25-4.0161, Florida Administrative Code, requires the payment of RAF by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of Administration's records show that SSTI had not paid its 2000 RAF in full, plus statutory penalty and interest charges. Therefore, it appears the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, and has not requested cancellation of its certificate in compliance with Rule 25-24.820, Florida Administrative Code. We find that the failure of SSTI to pay its RAF constitutes a willful violation of our rules.

Accordingly, Southern States Telephone, Inc. is hereby ordered to show cause in writing within 21 days of the issuance of this Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code. The company's response shall contain specific allegations of fact and law. If SSTI fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing shall be deemed waived, and the fine shall be deemed assessed. If the fine and fees are not paid within ten business days after this Order becomes final, they shall be forwarded to the Office of the Comptroller for collection. If the fine and fees are paid, the fine shall be remitted to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Southern States Telephone, Inc. shall show cause in writing within 21 days of the date of this Order to Show Cause why it should not be fined \$10,000 or have its certificate canceled for apparent violation of Rules 25-4.043 and 25-4.0161, Florida Administrative Code. It is further

ORDERED that any response to the Order to Show Cause filed by Southern States Telephone, Inc. shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order to Show Cause, as well as a waiver of the right to a hearing, and will result in the automatic assessment of the fine. It is further

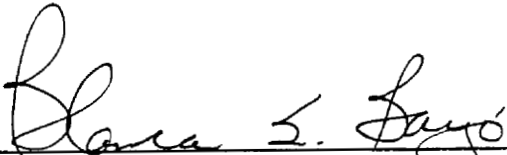
ORDERED that if Southern States Telephone, Inc. pays the fine, it shall be remitted to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. It is further

ORDERED that in the event Southern States Telephone, Inc. fails to respond to this Order to Show Cause and the fine is not received within ten business days after the expiration to the show

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cause response period, Certificate Number 5694 shall be canceled, and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of May, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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JKF

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.

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This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response 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 May 28, 2001.

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 and a default pursuant to Rule 28-106.111(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.