



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

RECORDS AND REPORTING

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RECEIVED-PSC

DATE: JULY 15, 1999

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

FROM: DIVISION OF LEGAL SERVICES (D.CLEMONS)
DIVISION OF COMMUNICATIONS (T.E.JOHNSON)

RE: DOCKET NO. 990886-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST LEASORTE ENTERPRISES, INC. FOR APPARENT VIOLATIONS OF RULE 25-24.515, F.A.C., PAY TELEPHONE SERVICE AND RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES.

AGENDA: 07/27/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\990886.RCM

Handwritten initials: DMC/CB, TEF, and a signature.

CASE BACKGROUND

- March 22, 1999 - Leasorte Enterprises, Inc.'s 1998 regulatory assessment fee return reported gross intrastate revenues of \$197,623.25 and 238 pay telephones in operation.
- February 18-25, 1999 - Staff performed routine service evaluations on five pay telephones operated by Leasorte Enterprises, Inc. and found apparent violations as presented in Attachment A.
- March 8, 1999 - Staff mailed a letter to the address listed in the Master Commission Directory informing Leasorte Enterprises, Inc. of the apparent violations found on the evaluations.

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- March 25, 1999 - Staff mailed a certified letter to the address listed in the Master Commission Directory informing Leasorte Enterprises, Inc. of the apparent violations found on the evaluations after not receiving a response to the initial letter. The return receipt was returned by the United States Postal Service signed by the company.
- April 19-23, 1999 - Staff reevaluated the pay telephone stations and again found the apparent violations as presented in Attachment A.
- April 30, 1999 - Staff called the company and left a message.
- May 3, 1999 - Staff called the company and a representative said they needed a few days.
- May 24, 1999 - Staff called the company and left a message.

DISCUSSION OF ISSUES

ISSUE 1: Should Leasorte Enterprises, Inc. (Leasorte) be ordered to show cause why a fine of \$1,500 for apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, should not be imposed or certificate number 2746 should not be canceled?

RECOMMENDATION: Yes. The Commission should order Leasorte to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 2746 canceled or be fined \$1,500 for apparent violation of Rule 25-24.515, Florida Administrative Code. Leasorte's response must contain specific allegations of fact or law. If Leasorte fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 2746 should be canceled. If the fine is paid it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (T.E.JOHNSON)

STAFF ANALYSIS: Staff performed service evaluations on pay telephone stations operated by Leasorte on February 18-25, 1999. Through written correspondence, staff notified Leasorte of the apparent violations.

Leasorte did not report the status of any corrective action taken, and staff performed a reevaluation of the same pay telephone stations on April 19-23, 1999. The reinspection resulted in the same apparent violations noted during the initial inspection.

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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 Leasorte'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 Leasorte's conduct in issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission find that Leasorte's apparent violations of Rule 25-24.515, Florida Administrative Code, warrant issuance of a show cause order. In this regard, the Commission should order Leasorte to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 2746 canceled or be fined \$1,500 for apparent violation of Rule 25-24.515, Florida Administrative Code. Leasorte's response must contain specific allegations of fact or law. If Leasorte fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 2746 should be canceled. If the fine is paid it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

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ISSUE 2: Should Leasorte be ordered to show cause why a fine of \$25,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, should not be imposed?

RECOMMENDATION: Yes. The Commission should order Leasorte to show cause in writing within 21 days of the date of the order why it should not be fined \$25,000 for apparent violation of Rule 25-4.043, Florida Administrative Code. Leasorte's response must contain specific allegations of fact or law. If Leasorte fails to respond to the show cause order, the fine should be deemed assessed. If the fine is not paid within 5 business days after the Order becomes final, it should be forwarded to the Office of the Comptroller for collection. If the fine is paid it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (T.E.JOHNSON)

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company fails to comply with Commission rules. Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, requires a reply to staff inquiries be furnished in writing within (15) days of the Commission inquiry.

As previously mentioned, staff sent Leasorte correspondence on March 8 and March 25, 1999 regarding the apparent violations found during the pay telephone service evaluations. After several weeks with no response, staff contacted Leasorte on several occasions and requested a response to the initial evaluations. To date, staff has not received a response.

Leasorte has a previous history of failing to respond to staff's inquiries. On February 14, 1994, Order PCS 94-0182-FOF-TC, in Docket No. 930878-TC, was issued ordering the company to show cause why they should not be fined for failing to respond to Commission inquiries. On March 8, 1994, Leasorte paid the \$500 fine, and therefore, the company's certificate was not canceled.

Based on the foregoing, staff recommends the Commission assess a \$25,000 fine.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issues 1 and 2 are approved, then Leasorte 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 Leasorte timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the fines are paid, they should be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.281(1), Florida Statutes, and this docket closed. If Leasorte does not respond to the show cause order, and the fines are not received within five business days after the expiration of the show cause response period then the fines in Issue 1 and 2 should be imposed and Leasorte's certificate should be canceled. This docket can then be closed administratively.
(D.CLEMONS)

STAFF ANALYSIS: If staff's recommendation in Issues 1 and 2 are approved, then Leasorte 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 Leasorte timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the fines are paid, they should be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund Pursuant to Section 364.281(1), Florida Statutes, and this docket closed. If Leasorte does not respond to the show cause order, and the fines are not received within five business days after the expiration of the show cause response period then the fines in Issue 1 and 2 should be imposed and Leasorte's certificate should be canceled. This docket can then be closed administratively.

| Pay Telephone Station Number | 25-24.515(9) (a) | | | | 25-24.515(2) | 25-24.515(18) (a-e) | |
|------------------------------|--|--|---|------------------------------------|--------------------------------|--|--|
| | Address of Responsible Party for Refunds/Repairs Not Displayed | Legible And Correct Telephone Number Was Not Displayed | Correct Address Of Pay Phone Location Was Not Displayed | Name Of Provider Was Not Displayed | Local Coin Rate Was Not Posted | Not Sufficient Light To Read Instructions At Night | Telephone Was Not Accessible To The Physically Handicapped |
| 954-462-9693 | | | X | X | | | |
| 954-567-9071 | X | X | X | X | X | | |
| 954-581-6990 | | X | X | X | | X | X |
| 954-763-9690 | | | X | | | | |
| 954-792-9518 | | | X | X | | | |

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ATTACHMENT A