

State of Florida



Public Service Commission

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RECORDS AND
REPORTING

DATE: APRIL 8, 1999

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

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) *C. H. C. - MUB*
DIVISION OF COMMUNICATIONS (BIEGALSKI) *VB - RNT*

RE: DOCKET NO. 990360-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST TRIPLEX TELEPHONE COMMUNICATIONS, INC. FOR VIOLATION OF RULE 25-24.515, FLORIDA ADMINISTRATIVE CODE, PAY TELEPHONE SERVICE, RULE 25-4.0161, FLORIDA ADMINISTRATIVE CODE, REGULATORY ASSESSMENT FEES AND 25-4.043, FLORIDA ADMINISTRATIVE CODE, RESPONSE TO COMMISSION STAFF INQUIRIES

AGENDA: 4/20/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\990360.RCM

CASE BACKGROUND

Triplex Telephone Communications, Inc. (Triplex), certificate number 5940, is a provider of pay telephone service and was certificated on November 3, 1998. Due to the fact that Triplex has not filed its 1998 Regulatory Assessment Fee form as of April 1, 1999, staff is unable to determine how many pay phones Triplex operates in the state of Florida. In addition, staff is unable to determine its operating revenues. As a provider of pay telephone service in Florida, Triplex is subject to the rules and regulations of this Commission.

Staff performed routine service evaluations on December 8, 1998 through December 10, 1998 and found apparent violations of the

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following Commission Pay Telephone Service rules: direct coin free access to the responsible party for repairs and refunds set forth in 25-24.515 (8), Florida Administrative Code; legible and correct address and phone number of the pay station, and an address and phone number of the responsible party displayed as set forth in 25-24.515 (9)(a), Florida Administrative Code; ability to originate call as set forth in Rule 25-24.515(15)(a), Florida Administrative Code; and current directory requirements as set forth in 25-24.515 (16)(a), Florida Administrative Code.

Staff mailed letters to Triplex regarding the apparent violations on December 10, 1998 and December 14, 1998 and requested a written response within 15 days. When Triplex did not respond to staff's initial letter, staff then mailed certified letters to Triplex on January 5, 1999. The letters were signed for and received, but to date staff has not received a response.

Due to the number of violations found during these routine service evaluations and the unresponsiveness of Triplex, staff recommends that Triplex be ordered to show cause why it should not be fined or have its certificate canceled for numerous violations of the Commission's pay telephone service standards (Attachment A, Pages 6-9), nonpayment of the 1998 regulatory assessment fees, and failure to respond to Commission staff inquiries.

DISCUSSION OF ISSUES

ISSUE 1: Should Triplex Telephone Communications, Inc. be ordered to show cause why a fine of \$800 for apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees, and \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries should not be imposed or certificate number 5940 should not be canceled?

RECOMMENDATION: Yes. The Commission should order Triplex to show cause in writing within 21 days of the effective date of the order why it should not have Certificate No. 5940 canceled or be fined \$800 for apparent violation of Rule 25-24.515, Florida Administrative Code, \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, and \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code. The company's response must contain specific allegations of fact or law. If Triplex fails to respond to the show cause, the fine will be deemed assessed. If the fine is not paid after reasonable collection efforts by the Commission, 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. (Biegalski)

STAFF ANALYSIS: The following chart shows the total number of violations found during routine pay station evaluations that were conducted from December 8, 1998, through December 10, 1998, for each rule.

RULE	NUMBER OF VIOLATIONS
Rule 25-24.515(8), Florida Administrative Code; Access to repairs/refund number	1
Rule 25-24.515(9) (a), Florida Administrative Code; Required telephone numbers, addresses, clear dialing instructions, and coin rate	2
25-24.515(15) (a), Florida Administrative Code; Allows outgoing calls	3
Rule 25-24.515(16) (a), Florida Administrative Code; Current telephone directory available	2
TOTAL VIOLATIONS	8

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

In addition, Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees 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. On March 5, 1999, staff learned that Triplex had not submitted the regulatory assessment fee for the year 1998, along with statutory penalties and interest charges, for its pay telephone certificate. Therefore, the company has failed to comply with Rule 25-4.0161, Florida Administrative Code.

Furthermore, Rule 25-4.043, Florida Administrative Code, 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 sent certified letters to Triplex on January 5, 1999, and requested a response within 15 days. The letters were signed for and received, but to date, staff has not received a response. In

this regard, it appears that Triplex is in violation of Rule 25-4.043, Florida Administrative Code.

Accordingly, staff recommends that the Commission find that Triplex's apparent violations of Rule 25-24.515, Florida Administrative Code, Rule 25-4.0161, Florida Administrative Code, and Rule 25-4.043, Florida Administrative Code, warrant issuance of a show cause order. Triplex should be ordered to show cause within 21 days of the order why it should not be penalized pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, then Triplex 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 Triplex timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If Triplex does not respond to the Commission's Order to Show Cause, the fines should be assessed. The fines should be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. Staff recommends that if Triplex fails to respond to the Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, Triplex's certificate should be canceled and this docket closed administratively. (Fordham)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then Triplex 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 Triplex timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If Triplex does not respond to the Commission's Order to Show Cause, the fines should be assessed. The fines should be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. Staff recommends that if Triplex fails to respond to the Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, Triplex's certificate should be canceled and this docket closed administratively.

25-24.515 Pay Telephone Service.

(1) For the purposes of this section, the term "direct free" shall mean without requiring the use of a coin, paper money, credit card, or any other form of payment, even if the payment will be returned.

(2) Pay telephone stations shall be lighted during the hours of darkness when light from other sources is not adequate to read instructions and use the instrument.

(3) Each pay telephone station shall return any deposited amount if the call is not completed, except messages to a Feature Group A access number.

(4) Each pay telephone station shall permit direct free access to the universal telephone number "911", where operable.

(5) Each pay telephone station shall permit direct free access to dialtone.

(6) Each Pay telephone station shall permit direct free access to toll free numbers (e.g., 800, 877, and 888).

(7) Each pay telephone station shall complete calls to local and long distance directory assistance.

(8) Each pay telephone station shall complete calls to the responsible party for repairs or refunds by direct free access.

(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.

(b) For those pay telephone stations that will terminate conversation after a minimum elapsed time notice shall be included on the sign card as well as an audible announcement 30 seconds prior to termination of the phone call.

(c) Pay telephone providers have until June 30, 1999, or six months after the effective date of this rule, which ever is later, to comply with the requirements of placing the certificate number on the pay telephone station sign, card, or plate.

(10) Each pay telephone station which provides access to any interexchange company shall provide coin free access, except for Feature Group A access, to all locally available interexchange companies. The pay telephone station shall provide such access through the forms of access purchased by locally available long distance carriers such as 10XXX+0, 10XXXX+0, 101XXXX+0, 950, toll free (e.g., 800, 877, and 888) access.

(11) No sales solicitation shall be allowed during the interval between the last digit dialed by the end user and connection with the interexchange carrier.

(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).

(13) (a) Each pay telephone station shall allow incoming calls to be received at all times, with the exception of those located at hospitals, schools, and locations specifically exempted by the Commission. There shall be no charge for receiving incoming calls.

(b) A pay telephone provider may petition the Commission for an exemption from the incoming call requirement for a period that shall not exceed two years from the effective date of the Order granting the exemption. Requests for exemption from the requirement that each pay telephone station allow incoming calls shall be accompanied by a completed Form PSC/CMU-2 (02/99), entitled "Request to Block Incoming Calls," which is incorporated into this rule by reference and may be obtained from the Commission's Division of Communications. The form requires an attestation from the owner of the pay telephone, the owner of the pay telephone location, and the chief of the responsible law enforcement agency that the request is sought in order to deter criminal activity facilitated by incoming calls being received at the specified pay telephone. A separate form shall be filed for each telephone number for which an exemption is sought. Exemptions which were granted prior to the two-year limitation will expire two years from the effective date of the amendment establishing the two-year limitation. The provider of the pay telephone may request subsequent two-year exemptions by filing another Form PSC/CMU-2 (02/99). Where incoming calls are not received, central-office based intercept shall be provided at no charge to the end user and a written notice shall be prominently displayed on the instrument directly above or below the telephone number which states: "Incoming calls blocked at request of law enforcement."

(14) Each pay telephone station must be connected to an individual access line.

(15) (a) Each pay telephone service company shall permit outgoing calls to be placed from its pay telephone stations at all times.

(b) Each pay telephone service company shall make all reasonable efforts to minimize the extent and duration of interruptions of service. Service repair programs should have as their objective the restoration of service on the same day that the interruption is reported to the company. (Sundays and holidays excepted.)

(16) (a) Where there is a single pay telephone station, a directory shall be maintained at each station. Where there are two or more pay telephone stations located in a group, a directory for the entire local calling area shall be maintained at every other station. However, where telephone pay stations are fully enclosed, a directory shall be maintained at each pay telephone station. For purposes of this rule, the term "directory" shall mean both a current white page directory for the local calling area and a reasonably current yellow page directory that is appropriate for the calling area of the pay telephone station. Companies must comply with this subsection by June 30, 1999, or six months after the effective date of this rule, whichever is longer.

(b) Pay telephone stations that provide local directory assistance at no charge are exempt from the provisions in (16)(a). A notice must appear on the placard if local directory assistance at no charge is being provided.

(17) Normal maintenance and coin collection activity shall include a review of the cleanliness of each pay telephone station.

(18) (a) Except as provided in paragraphs (18)(a)-(c) and (e) below, each pay telephone station shall conform to sections 4.28.8.4 and 4.29 of the American National Standards Accessible and Usable Buildings and Facilities, approved December 15, 1992, by the American National Standards Institute, Inc. (ANSI A117.1-1992), which is incorporated by reference into this rule.

(b) Where there are two or more pay telephone stations located in a group, there shall be a minimum of one telephone per group of ten which conforms to the ANSI standards listed in subsection (18)(a). The conforming station must be physically located in the group of pay telephone stations or must be installed within a clear line of sight within 15 feet of the group and the route to the conforming station must be free from wheelchair barriers.

(c) Except for locations on floors above or below entry level in buildings not serviced by a ramp or elevator, pay telephone stations shall be placed in areas accessible to the physically handicapped.

(d) Pay telephone stations located in buildings which are not wheelchair accessible must comply with all ANSI provisions cited in this subsection except that these stations are exempt from complying with ANSI sections 4.29.2 through 4.29.4, 4.29.7, and 4.29.8 until the building is modified to make it wheelchair accessible.

(e) Pay telephones shall not be installed where the required "clear floor or ground space" provided for in ANSI section 4.29.2 is reduced by a vehicle parked in a designated parking space.

(f) Each pay telephone provider shall modify its pay telephone station to comply with ANSI section 4.29.5 within six months from the effective date of these rules.

(19) Each pay telephone station shall permit end users to input unlimited digits for the duration of the call.

(20) Toll Fraud Liability.

(a) A company providing interexchange telecommunications services or local exchange telecommunications services shall not collect from a pay telephone provider for charges billed to a line for calls which originated from that line through the use of access codes such as 10XXX, 10XXXX, 101XXXX, 950, and toll free (e.g., 800, 877, 888) access codes, or when the call originating from that line otherwise reached an operator position, if the originating line is subscribed to outgoing call screening and the call was placed after the effective date of the outgoing call screening order.

(b) A company providing interexchange telecommunications services or local exchange telecommunications services shall not collect from a pay telephone provider for charges for collect or third number billed calls, if the line to which the call was billed was subscribed to incoming call screening and the call was placed after the effective date of the incoming call screening order.

(c) Any calls billed through the provider of local exchange telecommunications services or directly by an interexchange company, or through a billing agent, which have been identified as not collectible as described in paragraphs (20)(a) and (20)(b) above, must be removed from any pay telephone provider's bill after the pay telephone provider gives notice of the fraudulent charges to the billing party. Pay telephone providers shall give such notice to the provider of local exchange telecommunications services and the interexchange company in writing no later than the due date of the bill.

(d) The provider of local exchange telecommunications services is responsible for charges described in paragraph (20)(c) that are associated with the failure of the provider of local exchange telecommunications services' screening services.

(e) The interexchange company is responsible for charges described in paragraph (20)(c) that are associated with the failure to properly validate calls via the appropriate provider of local exchange telecommunications services' data base.

(f) Definitions: For purposes of subsection (20) the term "Effective Date" shall mean the date after the call screening order was placed and associated charges apply.

(g) Any charges accrued to a line when the subscriber has subscribed to the provider of local exchange telecommunications services to screen calls described in paragraphs (20)(a) and (20)(b) above shall not be the basis for discontinuance of local and intrastate service.

(21) Providers serving confinement facilities shall provide for completion of all inmate calls allowed by the confinement facility.

(22) Pay telephone stations located in confinement facilities shall be exempt from the requirements of subsections (2), (4), (6), (7), (8), (10), (12), (13), (15), (16), and (19) of this rule. Such pay telephone stations shall also be exempt from the requirements of subsection (9), except that outgoing local and long distance calls may not be terminated until after a minimum elapsed time of ten minutes. Audible and written disconnect notifications shall apply, and one access line shall not be connected to more than three pay telephone stations.

Specific Authority 350.127(2) FS.

Law Implemented 364.03, 364.035, 364.063, 364.337, 364.3375, 364.345 FS.

History—New 1-5-87, Amended 4-14-92, 12-21-92, 2-3-93, 10-10-94, 12-27-94, 9-5-95, 2-1-99.