



Public Service Commission

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RECORDS AND
REPORTING

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RECEIVED-PSC

DATE: JUNE 17, 1999

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

FROM: DIVISION OF LEGAL SERVICES (CLEMONS) *PNC CB*
DIVISION OF COMMUNICATIONS (BIEGALSKI) *KB*

RE: DOCKET NO. 990735-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST LUPTON INDUSTRIES FOR VIOLATION OF RULE 25-24.515, FLORIDA ADMINISTRATIVE CODE, PAY TELEPHONE SERVICE

AGENDA: 06/29/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990735.RCM

CASE BACKGROUND

- January 5, 1999 - Lupton Industries' (Lupton) 1998 regulatory assessment fee return reported gross intrastate revenues of \$1,359.25 and 1 pay telephone in operation.
- February 16, 1999 - Staff performed routine service evaluations on a pay telephone operated by Lupton.
- March 10, 1999 - Staff received a Service Violation Correction Form from Lupton signifying that all apparent violations were corrected.
- April 16, 1999- Staff reevaluated the pay telephone station and continuing rule violations were identified.

DOCUMENT NUMBER-DATE

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PPSC-RECORDS/REPORTING

DISCUSSION OF ISSUES

ISSUE 1: Should Lupton Industries be ordered to show cause why a fine of \$100 for apparent violation of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, should not be imposed or certificate number 2406 should not be canceled?

RECOMMENDATION: Yes. The Commission should order Lupton to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 2406 canceled or be fined \$100 for apparent violation of Rule 25-24.515, Florida Administrative Code. Lupton's response must contain specific allegations of fact or law. If Lupton fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 2406 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. (Biegalski)

STAFF ANALYSIS: Staff performed service evaluations of a pay telephone station operated by Lupton on February 16, 1999. Through written correspondence, staff notified Lupton of the apparent violations.

Staff performed a reevaluation of the same pay telephone station on April 16, 1999. Although Lupton reported that all violations had been corrected, the table provided as Attachment A (page 5) depicts the apparent rule violation that was still present in the reevaluation.

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

Accordingly, staff recommends that the Commission find that Lupton's apparent violation of Rule 25-24.515, Florida Administrative Code, warrants issuance of a show cause order. In this regard, the Commission should order Lupton to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 2406 canceled or be fined \$100 for apparent violation of Rule 25-24.515, Florida Administrative Code. Lupton's response must contain specific allegations of fact or law. If Lupton fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 2406 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.

ISSUE 2: Should this docket be closed?

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

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then Lupton 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 Lupton timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the fine is paid, it should be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, and this docket should be closed. Staff recommends that if Lupton fails to respond to the Order to Show Cause, and the fine is not received within five business days

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after the expiration of the show cause response period, Lupton's certificate should be canceled and this docket closed.

Pay Telephone Station Number	25-24.515(8)
	Repair/Refund Number Not Working Properly
813-914-8829	X