

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against SMBR, Inc. for apparent violation of Rule 25-24.515, F.A.C., Pay Telephone Service, and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 990781-TC
ORDER NO. PSC-99-1580-SC-TC
ISSUED: August 11, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE

BY THE COMMISSION:

SMBR Inc. (SMBR), is a provider of pay telephone service, pursuant to certificate number 5597 granted by Order No. PSC-98-0338-FOF-TC, issued on February 27, 1998. The 1998 Regulatory Assessment Fee Return has not been received from SMBR, so the number of pay telephone stations they have in operation is unknown. As a provider of pay telephone service in Florida, SMBR is subject to the rules and regulations of the Commission.

During routine service evaluations performed by Public Service Commission staff on February 22, 1999, apparent violations of the Commission Pay Telephone Rules were observed, and SMBR was notified of those violations. On March 12, 1999, SMBR advised the Commission that all apparent violations were corrected. On April 13, 1999, Commission staff reevaluated the pay telephone stations in question and identified the same apparent violations.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Rule 25-24.515, Florida Administrative Code, sets forth the requirements for pay telephone service in Florida. The portions of this rule which were apparently violated by SMBR and specific instances of violations are as follows:

(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 service), and the local coin rate.

On pay telephone station number 850-656-4571, the original and follow-up evaluation disclosed that, (1) The address of the responsible party for refunds and repairs was not displayed; (2) The legible and correct telephone number of the telephone pay station was not displayed; (3) The correct address of the telephone pay station was not displayed; (4) The name and certificate number of the certificate holder was not provided; and (5) Clear and accurate dialing instructions were not displayed. On pay telephone station number 850-656-3903, the original and follow-up evaluation disclosed that, (1) The address of the responsible party for refunds and repairs was not displayed; (2) The correct address of the telephone pay station was not displayed; (3) The name and certificate number of the certificate holder was not provided; (4) The local coin rate was not posted; and, (5) Clear and accurate dialing instructions were not displayed.

Pursuant to Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each day a violation continues, 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, Florida Statutes. 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,

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either civilly or criminally," Barlow v. United States, 32 U.S. 404, 411 (1833).

We believe that SMBR's apparent conduct in failure to post the required information on their telephone pay stations 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, Florida Administrative Code, 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 SMBR's conduct at issue here, would meet the standard for a "willful violation."

SMBR shall have 21 days from the date of this order to respond in writing why they should not be fined \$1,000 for apparent violation of Rule 25-24.515(9)(a), Florida Administrative Code, or why certificate number 5597 should not be canceled if the fine is not submitted within five business days after the Order is issued. If SMBR timely responds to the show cause order, this docket shall remain open, pending resolution of the show cause proceeding. If SMBR does not respond to the Commission's Order to Show Cause, the fine shall be deemed assessed. If SMBR 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, certificate number 5597, issued to SMBR, shall be canceled and this docket closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that SMBR, Inc. shall show cause in writing within 21 days of the date of this Order why it should not be fined \$1,000 for apparent violation of Rule 25-24.515(9)(a), Florida Administrative Code, or have their certificate canceled if the fine is not submitted within five business days after the expiration of the show cause response period. It is further

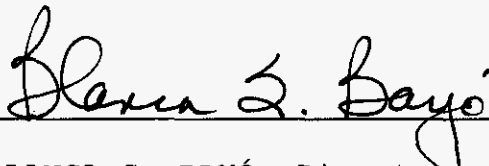
ORDERED that any response to the Order to Show Cause filed by SMBR, Inc. shall contain specific allegations of fact and law. It is further

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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, as well as a waiver of right to a hearing, and will result in the automatic assessment of the appropriate fine and cancellation of certificate. It is further

ORDERED that in the event SMBR, Inc. fails to respond to this Order and the fine is not received within five business days after the expiration to the show cause response period, certificate 5597 shall be canceled and this docket closed administratively.

By ORDER of the Florida Public Service Commission this 11th day of August, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CLF

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.

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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.

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 September 1, 1999.

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.