

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

DATE: JANUARY 20, 2000

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

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) *C.P. 4 - Bk*
DIVISION OF COMMUNICATIONS (BIEGALSKI) *VB PAT*

RE: DOCKET NO. 992032-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST PUBLIC PAYPHONE U.S.A., INC. FOR APPARENT VIOLATION OF RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES

AGENDA: 2/1/00 - REGULAR AGENDA - ISSUE 1 - SHOW CAUSE - ISSUE 2 - PROCEDURAL MATTER - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\992032.RCM

CASE BACKGROUND

- March 25, 1999 - Public Payphone U.S.A., Inc. (Public) obtained Florida Public Service Commission Interexchange Telecommunications Certificate Number 5810.
- August 9, 1999 - Staff mailed a certified letter to Public requesting information pertaining to its operator service provider rates listed in its tariff. Staff requested a response by August 24, 1999. (Attachment A, Page 6)
- August 12, 1999 - Public signed for and received the certified letter. (Attachment B, Page 7)
- January 13, 2000 - To date, staff has not received a response to its certified letter.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DISCUSSION OF ISSUES

ISSUE 1: Should Public Payphone U.S.A., Inc. be ordered to show cause why a fine of \$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 5810 should not be canceled?

RECOMMENDATION: Yes. The Commission should order Public to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have Certificate Number 5810 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact or law. If Public fails to respond to the show cause, and the fine is not paid within 10 business days after the 21 day show cause period, certificate number 5810 should be canceled. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(Biegalski)**

STAFF ANALYSIS: 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 a certified letter to Public on August 9, 1999, and requested a written response by August 24, 1999. The letter was signed for and received by Public on August 12, 1999. To date, staff has not received a response from Public. In this regard, it appears that Public is in violation of Rule 25-4.043, Florida Administrative Code.

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).

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Staff believes that Public's conduct in failing to respond to Commission staff's inquiries in apparent violation of Commission 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 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 Public's conduct in issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission order Public to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have Certificate Number 5810 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact or law. If Public fails to respond to the show cause, and the fines are not paid within 10 business days after the 21 day show cause period, Certificate Number 5810 should be canceled. If the fines are paid, they should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should the Commission order Public Payphone U.S.A., Inc. to provide a written response addressing the questions in staff's August 9, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's order?

RECOMMENDATION: Yes. The Commission should order Public to provide a written response addressing the questions in staff's August 9, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's order. If the information is not provided in accordance with the Commission Order, a show cause proceeding may be initiated. **(Biegalski)**

STAFF ANALYSIS: On August 9, 1999, staff mailed a letter to Public requesting information related to the operator service provider rates in its tariff. Staff requested a response by August 24, 1999. The letter was signed for and received on August 12, 1999, but to date, staff has not received a response.

Therefore, the Commission should order Public to provide a written response addressing the questions in staff's August 9, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's Order. If the information is not provided in accordance with the Commission Order, a show cause proceeding may be initiated.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, then Public will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not have its certificate canceled or be fined in the amount proposed. If Public timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. This docket should also remain open pending the receipt of the information requested in staff's August 9, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's Order.

Staff recommends that if Public fails to respond to the Order to Show Cause, and the fine is not received within ten business days after the expiration of the show cause response period, the company's certificate should be canceled. If the requested information is not provided within ten business days of the issuance of the Commission's Order, this docket should remain open pending the initiation of further show cause proceedings. If Public provides the requested information, and pays the fine recommended in Issue 1, this docket should be closed. (Fordham)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then Public will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not have its certificate canceled or be fined in the amount proposed. If Public timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. This docket should also remain open pending the receipt of the information requested in staff's August 9, 1999, correspondence (Attachment A)

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within ten business days of the issuance of the Commission's Order.

Staff recommends that if Public fails to respond to the Order to Show Cause, and the fine is not received within ten business days after the expiration of the show cause response period, the company's certificate should be canceled. If the requested information is not provided within ten business days of the issuance of the Commission's Order, this docket should remain open pending the initiation of further show cause proceedings. If Public provides the requested information, and pays the fine recommended in Issue 1, this docket should be closed.

STATE OF FLORIDA

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



DIVISION OF TELECOMMUNICATIONS
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

August 9, 1999

Mr. Joe Pekarovic
Public Payphone U.S.A., Inc.
11859 Wilshire Blvd., Suite 600
Los Angeles, CA 90025

CERTIFIED

Dear Mr. Pekarovic:

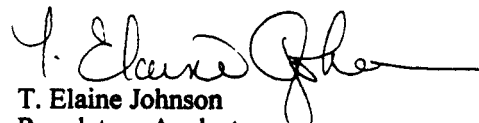
Staff is in the process of investigating the tariffed rates of the certificated operator service providers in the State of Florida. As a result, it appears that the operator service provider rates on file with the Florida Public Service Commission are in excess of the rate caps as provided in Rule 25-24.630, Florida Administrative Code. For your convenience, I have attached a copy of the Rules Governing Operator Service Providers.

Because its tariffed rates appear to exceed the rate caps applicable to an operator service provider for intrastate 0+ or 0- calls made from a pay telephone or in a call aggregator context, Public Payphone may have overcharged consumers from the time the rate caps became effective on February 1, 1999. Please investigate and provide a written response to the following questions by August 24, 1999:

1. Please identify all circumstances in which an overcharge may have occurred (i.e. pay phones, hotels/motels, etc.).
2. Please identify if the apparent overcharges were 0+ and/or 0- calls.
3. How many, if any, consumers were charged more than the rate caps applicable February 1, 1999?
4. What is the total overcharge, if any, since February 1, 1999?
5. In consideration of Rule 25-4.114, Refunds, Florida Administrative Code, what is Public Payphone's proposal to refund consumers should overcharges be determined?
6. When will Public Payphone revise its tariff to comply with Rule 25-24.630, Rates and Billing Requirements, Florida Administrative Code?

Should you have any questions, please feel free to contact me at (850) 413-6536.

Sincerely,


T. Elaine Johnson
Regulatory Analyst
Bureau of Service Evaluation

Enclosure

<p>SENDERS:</p> <ul style="list-style-type: none"> ■ Complete items 1 and 2 for additional services. ■ Complete items 3, 4a and 4b. ■ Print your name and address on the reverse of this form so that we can return this card to you. ■ Attach this form to the front of the mailpiece, or on the back if space does not permit. ■ Write "Return Receipt Requested" on the mailpiece below the article number. ■ The Return Receipt will show to whom the article was delivered and the date delivered. 	<p>I also wish to receive the following services (for an extra fee):</p> <p>1. <input type="checkbox"/> Addressee's Address</p> <p>2. <input type="checkbox"/> Restricted Delivery</p> <p>Consult postmaster for fee.</p>	
	<p>3. Article Addressed to:</p> <p>Mr. Joe Pekarovic Public Payphone U.S.A, Inc. 11859 Wilshire Blvd., Suite 600 Los Angeles, CA 90025</p>	<p>4a. Article Number</p> <p>7362 335 691</p>
<p>5. Received By: (Print Name)</p>	<p>7. Date of Delivery</p> <p>8/12/99</p>	
<p>6. Signature: (Addressee or Agent)</p> <p><i>[Handwritten Signature]</i></p>	<p>8. Addressee's Address (Only if requested and fee is paid)</p>	

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