



Public Service Commission

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

DATE: October 6, 2000
TO: Steve Tribble, Director of Administration
FROM: Diana Caldwell, Senior Attorney, Division of Legal Services
RE: Docket No. 992031-TI - Initiation of Show Cause proceeding against Digital Network Operator Services, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

On February 7, 2000, the Commission issued Order No. PSC-00-0251-SC-TI, in which it ordered Digital Network Operator Services, Inc. (Digital) to show cause, in writing, within 21 days, why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.

The Order to Show Cause also provided that failure to respond to that Order would be deemed an admission of the facts alleged, waiver of a right to a hearing, and the fines would be deemed assessed. In the event that Digital did not respond and the fines were not paid within ten business days after the Order to Show cause became final, the Order required that the fines be forwarded to the Department of Banking and Finance, Office of the Comptroller, for collection.

By Order No. PSC-00-1056-FOF-TI, issued June 2, 2000, Order No PSC-00-0251-SC-TI was modified to forward the \$10,000 fine imposed to the Office of the Comptroller for further collection efforts because Digital's certificate had already been canceled in a separate proceeding for a different violation. Therefore, we submit this matter to your office to forward the account to the Department of Banking and Finance, Comptroller's Office, for further collection efforts or permission to write-off the account.

The events leading to our determination are outlined below for your convenience.

- 1. On July 29, 1999, staff sent a certificated letter requesting a written response by August 16, 1999. The letter was signed for and received by Digital on August 2, 1999. It appeared that Digital was in violation of Rule 25-4.043, Florida Administrative Code.

APP
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DOCUMENT NUMBER & DATE

12855 OCT-98

FPSC-RECORDS/REPORTING

2. By Order No. PSC-00-0251-SC-TI, Digital was required to provide a written response addressing the questions in staff's July 29, 1999, correspondence within ten business days of the issuance of the Order.

Please find the following attached hereto:

- (a) Order No. PSC-00-0251-SC-TI
- (b) Order No. PSC-00-1056-FOF-TI
- (c) State of Florida Office of the Comptroller
Bureau of Auditing Delinquent Accounts
Receivable Transmittal

Digital's last known mailing address is:

Digital Network Operator Services, Inc.
400 East Centre Park, Suite 100
DeSoto, TX 75115-8802

Digital's last known physical address is:

Digital Network Operator Services, Inc.
c/o CT Corp. Systems
1200 South Pine Island Road
Plantation, FL 33324-4470

DWC

Attachments

cc: Division of Records and Reporting
Division of Communications (Watts, M.)

**STATE OF FLORIDA
OFFICE OF THE COMPTROLLER
BUREAU OF AUDITING
DELINQUENT ACCOUNTS RECEIVABLE TRANSMITTAL**

(PLEASE PRINT OR TYPE)

AGENCY: FLORIDA PUBLIC SERVICE COMMISSION

DATE: 10/6/00

CONTACT: EVELYN H. SEWELL, CHIEF, BUREAU OF FISCAL SERVICES

PHONE NUMBER: 413-6263

SAMAS ACCOUNT CODE: 61 20 2 573003 610000 00 000300
61 74 1 000331 610000 00 001200

4450
992031-TI

Digital Network Service, Inc. d/b/a Digital Network Operator Services, Inc..

AGENCY REFERENCE #	LAST NAME	FIRST	MIDDLE	SOCIAL SECURITY NUMBER	COMPTROLLER USE ONLY
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Digital Network Operator Services, Inc., 400 East Centre Park, Cuite 100, DeSoto, TX 75115-8802

LAST KNOWN ADDRESS (INCLUDE ZIP)

HOME TELEPHONE	WORK TELEPHONE	PRINCIPLE AMOUNT	PENALTY/INTEREST AMOUNT	TOTAL
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§ 364.285, F.S.

§ 350.113, F.S. Rule 25-4.043, F.A.C.

06/02/2000

8

PENALTY/INTEREST AUTHORITY	DATE DEBT INCURRED	DEBT TYPE
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SHOW CAUSE PENALTY

DEBT DESCRIPTION, e.g., DRIVER LICENSE, SALARY OVERPAYMENT, PROPERTY DAMAGE

ADDITIONAL INFORMATION, e.g., DATE OF BIRTH, DRIVER LICENSE NUMBER, ETC.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 992031-TI
ORDER NO. PSC-00-1056-FOF-TI
ISSUED: June 2, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

ORDER MODIFYING ORDER NO. PSC-00-0251-SC-TI

BY THE COMMISSION:

On February 7, 2000, Order No. PSC-00-0251-SC-TI (Order), was issued requiring Digital Network Service, Inc. d/b/a Digital Network Operator Services, Inc. (Digital) to show cause in writing within 21 days of the issuance of the Order why it should not be fined \$10,000 or have Certificate Number 4450 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code. In addition, the Order required Digital to provide a written response to the requested information within ten business days of the issuance of the Order.

The Order stated that if Digital failed to respond to the Show Cause Order, and the fines were not paid within ten business days after the 21 day show cause period, Certificate Number 4450 should be canceled. Furthermore, the Order stated that if Digital failed to provide a response to the requested information, the docket should remain open pending the initiation of further show cause proceedings. Our intent was to place Digital on notice that payment of the fine would not excuse the company from its obligation to respond to our staff's inquiry.

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Prior to the issuance of Order No. PSC-00-0251-SC-TI, Digital's certificate was canceled pursuant to Order No. PSC-99-2516-AS-TI, issued December 22, 1999, for failure to remit its \$100 settlement for failure to pay its regulatory assessment fees.

Therefore, since the company's certificate was canceled in Docket 991538-TI, for failure to comply with its settlement offer, we find Order No. PSC-00-0251-SC-TI shall be modified to forward the \$10,000 fine imposed to the Office of the Comptroller for further collection efforts because Digital's certificate has already been canceled in a separate proceeding for a different violation. All other aspects of Order No. PSC-00-0251-SC-TI shall remain the same.

It is therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-00-0251-SC-TI is modified to forward the \$10,000 fine imposed to the Office of the Comptroller for further collection efforts because Digital Network Service, Inc. d/b/a Digital Network Operator Services, Inc.'s certificate has already been canceled in a separate proceeding for a different violation. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 2nd day of June, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 992031-TI
ORDER NO. PSC-00-0251-SC-TI
ISSUED: February 7, 2000

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE FOR FAILURE TO RESPOND AND
TO PROVIDE CERTAIN INFORMATION TO STAFF

BY THE COMMISSION:

Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. (Digital) was granted Certificate Number 4450 on July 25, 1996, to provide intrastate interexchange telecommunications service. As a certificated telecommunications company Digital is subject to regulation by this Commission.

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.

Our staff sent a certified letter to Digital on July 29, 1999, and requested a written response by August 16, 1999. The letter was signed for and received by Digital on August 2, 1999. To date, staff has not received a response from Digital. In this regard, it

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appears that Digital is in violation of Rule 25-4.043, Florida Administrative Code.

By 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 offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of this Commission, or any provision of Chapter 364, Florida Statutes. Utilities are charged with knowledge of our 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).

We believe that Digital's conduct in failing to respond to our staff's inquiries in apparent violation of 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, we 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 Digital's conduct at issue here, meets the standard for a "willful violation."

Upon consideration, we find it reasonable to order Digital to show cause in writing within 21 days of the issuance of this Order why it should not have Certificate Number 4450 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code. The company's response should contain specific allegations of fact or law. If Digital timely responds to the Show Cause Order, this docket shall remain open pending resolution of the show cause proceeding. In addition, if Digital fails to respond to the Order, and the fines are not paid within ten business days after the 21 day show cause period, Certificate Number 4450 shall be canceled. If the fines are paid, they will be remitted to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

As stated earlier, our staff has not received a response to its letter to Digital on July 29, 1999, requesting information related to the operator service provider rates in its tariff.

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Staff had requested a response by August 16, 1999, and the letter was signed for and received on August 2, 1999. Therefore, we also find it reasonable to order Digital to provide a written response addressing the questions in staff's July 29, 1999, correspondence (Attachment A) within ten business days of the issuance of this Order. If Digital fails to provide the written responses requested, further show cause proceedings may be initiated against Digital. This docket shall remain open pending the receipt of the information requested in staff's July 29, 1999, correspondence within ten business days of the issuance of this Order.

Finally, we find it reasonable that if Digital 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 shall be canceled. If the requested information is not provided within ten business days of the issuance of this Order, this docket shall remain open pending the initiation of further show cause proceedings. If Digital provides the requested information, and pays the fine, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. shall show cause in writing within 21 days of the issuance of this Order why it should not have Certificate Number 4450 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, as discussed in the body of this Order. It is further

ORDERED that any response to this Order to Show Cause filed by Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. shall contain specific allegations of fact or law. It is further

Ordered that any collected fine monies shall be remitted to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. It is further

ORDERED that if Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. fails to respond to the show cause, and the fines are not paid within ten business days after the 21 day show cause period, Certificate Number 4450 shall be canceled. It is further

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ORDERED that Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. shall provide a written response addressing the questions in staff's July 29, 1999, correspondence (Attachment A) within ten business days of the issuance of this Order. If Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. fails to provide the written responses requested, further show cause proceedings may be initiated. It is further

ORDERED that if Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. timely responds to this Order, this docket shall remain open pending resolution of the show cause proceeding. This docket shall also remain open pending the receipt of the information requested in staff's July 29, 1999, correspondence (Attachment A) within ten business days of the issuance of this Order. It is further

ORDERED that if Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. fails to respond to this Order, and the fine is not received within ten business days after the expiration of the show cause response period, the company's certificate shall be canceled. It is further

ORDERED that if the requested information is not provided by Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. within ten business days of the issuance of this Order, this docket shall remain open pending the initiation of further show cause proceedings. If Digital provides the requested information, and pays the fine, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 7th
day of February, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. A signed
copy of the order may be obtained by
calling 1-850-413-6770.

(S E A L)

SOME (OR ALL) ATTACHMENT PAGES ARE NOT ON ELECTRONIC DOCUMENT.

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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.

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 February 28, 2000.

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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.