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CLARK JFC

**FLORIDA PUBLIC SERVICE COMMISSION**  
**Fletcher Building**  
**101 East Gaines Street**  
**Tallahassee, Florida 32399-0850**

**MEMORANDUM**

**June 13, 1991**

**TO :** DIRECTOR, DIVISION OF RECORDS AND REPORTING

**FROM :** DIVISION OF LEGAL SERVICES [ADAMS] *ADG*  
DIVISION OF COMMUNICATIONS [MOSES] *MS*

**RE :** ~~DOCKET NO. 910087-TC~~ - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST K.L. INDUSTRIES FOR VIOLATION OF RULE 25-24.515(2), F.A.C., FAILURE TO RETURN COINS

**AGENDA:** 06/29/91 - CONTROVERSIAL AGENDA - PARTIES MAY PARTICIPATE

**CRITICAL DATES:** NONE

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**CASE BACKGROUND**

K. L. Industries has been a certificated pay telephone provider since August 6, 1987. K.L. Industries operates 28 pay telephones in the State of Florida with a gross revenue of \$61,819.47 for 1990.

The Division of Consumer Affairs received a complaint on November 8, 1990 from Mr. William Logan (Attachment I). In this complaint, Mr. Logan stated that his call was timed from the moment he started dialing. After one minute passed, the phone kept Mr. Logan's coins even though the call was not answered. This is a violation of Rule 25-24.515(2), Florida Administrative Code, which provides:

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

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The complaint form (Attachment II) was sent to Mr. Kah Lee, President of K.L. Industries, whose response (Attachment III) was received on November 26, 1990. In his response Mr. Lee stated, "We found that our payphones at the location indicated were functioning properly." An evaluation was conducted by Staff on January 20, 1991 and found that both pay phones (904/372-0853 and 904/372-0341) located at the address Mr. Logan indicated were in violation of Rule 25-24.515(2) concerning the return of deposited coins when the call is not completed.

On April 9, 1991, the Commission issued Order 24341 requiring K.L. Industries to show cause why it should not be fined \$1,000 for violation of Rule 25-24.515(2), and an additional \$1,000 for intentional misrepresentations to staff (Attachment IV). Order No. 24341 also required K.L. Industries to verify that all its instruments were in compliance with the rules regulating pay telephones.

Mr. Lee filed a reply to the show cause order on April 30, 1991 (Attachment V). In his reply, Mr. Lee asserted:

1. (a) That K.L. Industries made no misrepresentations because the company did not allege any repairs were made prior to March 12, 1991 Agenda Conference.
- (b) That the instrument in question was functioning as programmed.
- (c) That the Commission closed the matter on November 26, 1990.
- (d) That the company was not aware of any alleged violations. The company also alleged that it was prejudiced because the docket was taken to Agenda earlier than scheduled.
- (e) That the company regularly checks certain functions of its pay telephones and that items 1 and 21 were found to be properly functioning by both Mr. Lee and the evaluator.
- (f) That a show cause proceeding is not an appropriate form for resolution of technical issues such as answer supervision and connection.

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2. That in meetings after the Agenda Conference, Mr. Lee has spoken with staff in attempting to resolve the various issues raised in this docket.
3. That the decision reflected in Order No. 24341 should be reconsidered.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the penalties proposed in Order No. 24341 be imposed on K.L. Industries?

**RECOMMENDATION:** Yes. The Commission should require K.L. Industries to pay \$1,000 for violation of Rule 25-24.515(2), pay an additional \$1,000 for misrepresentations to staff, and certify within 30 days that all of its pay telephones comply with rules regulating pay telephone service providers.

**STAFF ANALYSIS:** Mr. Lee's reply on behalf of K.L. Industries reflects an unfamiliarity with Commission procedures. The reply is styled a Petition for Reconsideration, which is not appropriate in the procedural position in which K.L. Industries finds itself. Even if Mr. Lee's filing is construed in the procedural light most favorable to K.L. Industries, it fails as a defense on its face. His reply raises no adequate legal or factual defenses, fails to request a formal hearing, and effectively constitutes a default.

In response to Mr. Lee's assertion, staff recommends that the Commission adopt the following positions:

1. (a) Mr. Lee did misrepresent that his telephones were in compliance with rules regulating pay telephone services in his letter dated November 20, 1991. Mr. Lee's reply did not address the allegations made in Order No. 24341.
- (b) The pay telephone in question did not function properly for Mr. Logan, and did not function properly when tested by the evaluator two months later.
- (c) The matter could not be closed by the Commission on November 26, 1990 because the Commission did not consider the matter until March 12, 1991.

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- (d) Staff was not obligated to inform K.L. Industries that the telephones were not in compliance with the rules after Mr. Lee had already asserted that the telephones were in compliance. Furthermore, the early Agenda date does not effect Mr. Lee's ability to respond to a show cause proceeding.
  - (e) While it is laudable that K.L. Industries regularly checks the telephones' functions, and that Items 1 and 21 were found to be functioning by both Mr. Lee and the evaluator, this does not address the problems alleged. This does not constitute a defense to the allegations made in Order No. 24341.
  - (f) While determining answer supervision and connection are recognized problems for some models of pay phones, various mechanisms are available to deal with these problems. It may well be necessary for K.L. Industries to update its equipment in order to comply with the pay telephone rules.
2. Any post-Agenda staff assistance has no bearing on the allegations made in the Show Cause Order.

Mr. Lee's reply simply fails to adequately address the allegations raised in Order No. 24341 with the required factual or legal specificity. For this reason, the reply is insufficient on its face. Because Mr. Lee's defenses are inadequate, and because no hearing is requested, staff recommends the Commission impose the penalties proposed in Order No. 24341.

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ATTACHMENT I

210 NE 7th Street, Gainesville, Florida 32601  
26 October 1990

Florida Public Service Commission  
101 E. Gaines Street.  
Tallahassee, Florida 32399



Dear Sirs:

I wish to complain about KL Ind., Inc., the operators of a pair of pay phones at Pic n' Save, corner of Main Street and NE 10th Avenue, Gainesville.

At 10 a.m. on the morning of 26 October, I used one of the pay phones. The phone has a digital clock which begins timing the call after dialing is completed, rather than after the call is connected. When the clock reached 1 minute, the phone swallowed my quarter, even though the call had not been answered. The call was never completed, but no refund could be made.

The card on the phone gave the service number as \*8, but no one answered this number. No other number was given, so I could not call to complain on reaching home. The address for KL Ind., Inc., was given as 947 Cedar Ridge Court, D.P., Florida 32065. This strikes me as an inadequate address, since the city is not identified.

I find it very disagreeable to be charged for the time when a phone is ringing, and I must assume that this company is—on this phone and perhaps others as well—in violation of public service regulations. I would appreciate your investigating the matter, and reporting to me how widespread this violation is in the pay phones of this company, what steps are to be taken to rectify the violations, and what fines have been levied on the company for theft of services.

Sincerely,

William Logan

ATTACHMENT II

to LOGAN, WILLIAM

Company KL INDUSTRIES

Request No. 32633P

Address 210 NE 7TH STREET

Attn. KAH LEE

By PJI Time 5:25 PM Date 11/01

City GAINESVILLE Zip 32601 County ALA

Consumer's Telephone \_\_\_\_\_

To CO. Time MAIL Date 11/01

Account Number \_\_\_\_\_

Can Be Reached \_\_\_\_\_

Complaint Type ps-05

or "Is the contacted company?" Yes \_\_\_\_\_ No  Who \_\_\_\_\_

Jurisdiction Y

1. Nature of Request 2. Report of Action

Closed By PJI Date 12/11

Reply received T

**CONSUMER REQUEST**

**FLORIDA  
PUBLIC  
SERVICE  
COMMISSION**



101 EAST GAINES STREET  
TALLAHASSEE, FLORIDA 32399

PLEASE RETURN THIS FORM WITH  
REPORT OF ACTION TO:

Paula Isler

By 11/26/90

ATTACHMENT II

See attached correspondence. Please investigate fully and advise by the date shown below.

11/26 - See attached final report.

Close by letter.

01/02 - Customer called back and was very upset. He said his receiving a 50 cents refund does not resolve the matter. He said the timing of his call was inaccurate, payphone kept his quarter without completing the call, there was no answer at the "\*8" number to report trouble, and the address on the payphone was incomplete. He feels the company should be fined for these violations. I attempted to explain what the company's report said and that it would be impossible to follow-up by making a premise visit to each payphone on which we received a complaint, but was unsuccessful. Finally, I said I would refer to Division of Communications for review and further handling.

01/11 - Sent to Communications.

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*Industries, Inc.*

*Rec  
11-26  
III*

Paula Isler,  
Public Service Commission,  
101 East Gaines Street,  
Tallahassee, FL 32399

Ref. No. 32633P

Date: 11-20-90

Dear Paula,

We have investigated the matter requested by you (see attached form). We found that our payphones at the location indicated were functioning properly. However, due to the line system maintained by the LEC, namely Southern Bell, and consumer owned telephone equipment, and also because of the weather condition or interference from many other sources, there may occasionally have some aberration of the line signal. Even though our payphone is running normally, there are other factors as mentioned above and which are beyond our control, that may cause payphone user to think that the payphone is intentionally taking the money.

Our payphone can display many messages to help the user, including the number dialed, the duration of call, and others. All local calls are 25 cents, even the duration of call is displayed. 28 is our speed dialing number for service and is a free call. Refund could also be requested thru our operator service and the store clerk when arranged. However, if there is reason to believe that the refund claim is fraudulent or inaccurate, the refund request may be rejected.

Mr. Logan left a phone number (371-7780) and no address at the store desk. We have attempted to reach him at that phone number. We did make at least five calls during a three hour period and that phone was always busy.

Instead of passing the blame to the LEC, and assuming that Mr. Logan did lose a quarter, we are sending him a refund check. (see attached copy of check).

If you have any further question regarding this matter, please feel free to contact me at 904-372-3884. Thank you.

Sincerely,

Kah Lee, president  
File: FSC.011



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause	)	DOCKET NO. 910087-TC
proceedings against KL INDUSTRIES,	)	ORDER NO. 24341
INC. for violation of Commission Rule	)	ISSUED: 4/9/91
25-24.515, F.A.C., Pay Telephone	)	
Service.	)	
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The following Commissioners participated in the disposition of this matter:

- THOMAS M. BEARD, Chairman
- J. TERRY DEASON
- GERALD L. GUNTER
- MICHAEL McK. WILSON

ORDER INITIATING SHOW CAUSE PROCEEDINGS

KL Industries, Inc. (KL) has been a certificated pay telephone service provider since August 6, 1987. As a certificated pay phone provider, KL is subject to our jurisdiction pursuant to Chapter 364.01, Florida Statutes.

William Logan filed a complaint against KL Industries on November 8, 1990. In his complaint, Mr. Logan alleged that the pay telephone he used started timing his call from the time he started dialing. Even though Mr. Logan's call was not completed, the telephone kept his coins. Rule 25-24.515(2), Florida Administrative Code, provides:

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

There is no indication that Mr. Logan was calling a Feature Group A access number.

The complaint form, together with a request for information, was sent to Mr. Kah Lee, President of KL Industries. Mr. Lee filed a response on November 6, 1991. Mr. Lee reported that the pay telephones in question were checked and found to be functioning properly.

After receiving Mr. Lee's response, our staff conducted a follow-up service evaluation. This evaluation indicated that both pay telephones at the location in question were failing to return

DOCUMENT NO. 4-9-91 3412-91
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coins after a call was not completed. This was in direct contradiction to the response filed by Mr. Lee.

The evidence presented to us thus far in this proceeding indicates that the telephones in question were being operated in violation of Rule 25-24.515(2). Furthermore, it appears that Mr. Lee's response was a deliberate attempt to mislead our staff with regard to the facts alleged. We find such misrepresentation to be a serious aggravating factor compounding not only the severity of the violation but the amount of the appropriate fine.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that KL Industries, Inc. be required to show cause why it should not be fined \$2,000 for violation of Rule 25-24.515(2). It is further

ORDERED that KL Industries shall show cause why they should not be required to certify that all its telephones have been checked and brought into compliance with the rules regulating pay telephone providers. It is further

ORDERED that failure to respond in writing to this Order shall be deemed a default and will result in cancellation of PATS Certificate No. 1636 held by KL Industries, Inc. It is further

ORDERED that any response to this Order shall comply with the requirements set forth below.

ORDERED that this docket shall remain open pending resolution of the show cause process.

By ORDER of the Florida Public Service Commission, this 9th day of APRIL, 1991.

  
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STEVE TRIBBLE Director  
Division of Records and Reporting

( S E A L )

JKA

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 29, 1991.

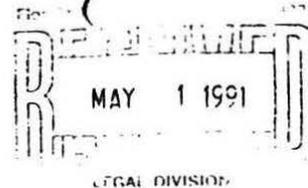
Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on 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 sewer 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.

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ATTACHMENT V  
PAGE 1 OF 3 PAGES

Florida Public Service Commission,  
Fletcher Building,  
101 East Gaines Street,  
Tallahassee, Florida 32399-0870



Attention: Steve Tribble, Director  
Division of Records and Reporting

Ref: Docket No. 910087-TC  
Order No. 24341

**ORIGINAL  
FILE COPY**

Petition for Reconsideration of Order No. 24341, Docket No. 910087-TC dated 4-9-91 for Initiating Show Cause Proceedings against KL Industries, Inc.

On behalf of KL Industries, Inc., the undersigned, hereby file the above mentioned request, based on the following reasons.

(1) During the Agenda Conference on March 12, 1991, Mr. Kah Lee, as owner of KL Industries, Inc. testified before the Commissioners that:

(a) Mr. Lee absolutely did not misrepresent any facts to the Commission. There are no alleged repair performed and no repair information was given to the Commission prior to the Agenda Conference on 3-12-91.

(b) At the time of Mr. Lee's investigation of the matter, Mr. Lee was not able to verify alleged claim by Mr. William Logan that the pay telephone started timing his call from the time he started dialing. The payphone was operated under rigid computer program instructions. The above description of the payphone operation did not fit any of the payphone instruction sequences. However, Mr. Logan was given the refund.

(c) After Mr. Lee filed a response on November 20, 1991, the matter was closed on 11-26 by the Commission. See Attachment II--line 4.

(d) Mr. Lee has not received any correspondence from the Commission's staff regarding any alleged violations and/or request to correct any deficiency prior to the Agenda Conference. A copy of the Evaluation conducted on 1-20-91 was included in the Memorandum dated 2-25-91 after Mr. Lee has talked to Mr. Moses, a staff member of the Commission. Mr. Lee has requested that the Agenda Conference be postponed in order to study the Evaluation and was told that the Agenda Conference was scheduled on 3-12-91 and can not be changed, eventhough the Memorandum clearly stated that the Agenda be placed on 4-2-91. As a result of this scheduling, the hearing Commissioners might not be properly presented with the various facts, except possible confrontations on the misunderstandings in the Evaluation and the letter dated 11-20-90, between Mr. Lee and the Commission's staff.

(e) There are certain payphone's operating functions that are checked periodically, many are similar to the items as listed in the Evaluation. Item 1 and item 21 were checked and found to be functioning properly at the time of investigation by Mr. Lee and by your evaluator approximately two months later.

*Various  
other  
detection  
or  
time*

(f) Other technical issue related to the line system, answer supervision and connection are not easily identifiable. These have been recognized by Mr. Lee's letter dated 11-20-90. These operational issues should best be resolved informally between the private pay telephone industry and the local exchange companies as proposed by Mr. Lee during the Agenda Conference. It appears that many workshops have been held within the scope of Docket No. 860723-TP. As a matter of fact, this type of interface problems did occur without any fault of the payphone. On 4-18-91, one of the payphone line was connected only to the "office" of the LEC. All calls were answered by an answering machine, which suggests to call Southern Bell 780 numbers. There are other peculiar instance which may cause payphone users to think that the payphone intentionally taking quarters. Any Show Cause Proceedings related possibly to the interface problem between Southern Bell and KL Industries, may be a duplication of effort already vested in the series of workshops and possibly be contrued that specific companies be singled out for the burden of resolving an industrial-wide issue.

(2) Shortly after the Agenda Conference, and in response to the need of complying with all the FPSC rules, every effort is made to cooperate with the Commission's staff including various consultations and conference regarding the Evaluation dated 1-20-91. Many actions taken by KL Industries, can be summarized by the letter dated 3-26-91. It is believed that some misunderstandings related to Sreen Displays, coin counting procedure, and payphone modem connection have been explained. Other items were corrected and at the time of correction, it is believed to be satisfactory.

(3) In view of the above mentioned reasons, it is therefore requested that this Order be Reconsidered by the Commissioners for its merit to continue the proceedings. It is also believed that this case can be resolved informally and without any prejudice against KL Industries, Inc. pending reevaluation and futher recommendation by your staff.

In sincere response to this Order, this 27th day of April, 1991.

Your Truly,



Kah Lee, owner  
KL Industries, Inc.

File:PSC.411

Mr. Don E. Robertson  
U.S./Communications Engineer  
Bureau of Service Evaluation  
Public Service Commission  
Fletcher Building, 101 East Gaines St.,  
Tallahassee, FL 32399-0866

Date: 3-26-91

Ref. Station Evaluation Results dated 1-20-1991

PHONE NUMBER	ITEM NUMBER	RESPONSE
904-372-0341 and 904-372-0853	2	Remove 1/2" leveling bolts. Concrete walkway were built approx. 10 years ago and is slightly inclined probably for rain water management purpose.
	6	Replace stolen phone book.
	19, 20	Replace lower housing label. Remove *R speed dialing for refund; replace with phone number digits needed to be dialed. Refund request could also be made thru ITI operator service even it is not posted.
	23, 24	Check ringing. call and converse with other phone. Two persons involved in these checkings of speakers, microphones and buzzers.
	26	Re-label and test 411 coin-free call.
	27	ATT is the phone long-distance carrier. *1 could reach ATT-0 coin-free. 950-XXXX could reach other IXC without coin.

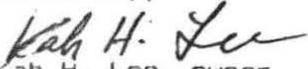
Remarks Vacuum fluorescent tube is not essential for the operation of the phone. The VFT display may show the amount needed to be deposited. 15 cents is needed if one dime has been deposited, and so on. It is convenient to the user if larger amount is involved, i.e. a long-distance phone call.

Payphone modem is programmed to connect in 3 to 5 rings. Per our conversation, if call is made from other payphone, they will be connected to each other thru modem.

Other actions taken: Re-connect broken phone line. Check and calibrate ringing signals. Restore program parameters. Make calls.

The above actions were taken during March 16 to 24, 1991. At the time of completion, we believe that we have corrected or checked all indicated items. If you have any question, please feel free to call me at 904-272-3884. Thank you for your cooperation.

Sincerely,

  
Kah H. Lee, owner  
KL Industries, Inc.  
947 Cedar Ridge Court,  
Orange Park, FL 32065

File:ESC.101