

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause	)	DOCKET NO. 910087-TC
proceedings against KL INDUSTRIES, INC.	)	
for violation of Commission Rule	)	ORDER NO. 24974
25-24.515, Pay Telephone Service.	)	
<hr/>		ISSUED: 8/26/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 J. TERRY DEASON  
 BETTY EASLEY  
 MICHAEL MCK. WILSON

FINAL ORDER RESOLVING SHOW CAUSE

BY THE COMMISSION:

KL Industries, Inc. (KL) has been a certificated pay telephone service provider since August 6, 1987. KL operates 28 pay telephones in the State of Florida with a gross revenue of \$61,819.47 for 1990. As a certificated PATS provider, KL is subject to our jurisdiction.

The Division of Consumer Affairs received a complaint on November 8, 1990 from Mr. William Logan. In this complaint, Mr. Logan stated that his call was timed from the moment he started dialing. After one minute passed, the telephone kept Mr. Logan's coins even though the call was not answered. Failure to return the coin if a call is not completed 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.

A complaint form was sent to Mr. Kah Lee, President of KL. Mr. Lee responded to the complaint 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 our staff on January 20, 1991 and found that both pay telephones (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.

DOCUMENT NUMBER-DATE

08504 AUG 26 1991

FPSC-RECORDS/REPORTING

ORDER NO. 24974  
DOCKET NO. 910087-TC  
PAGE 2

On April 9, 1991, we issued Order No. 24341 requiring KL 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. Order No. 24341 also required KL 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. In his reply, Mr. Lee asserted:

1. (a) That KL 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 we 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 of the evaluation form 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.
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.

Mr. Lee's reply is styled a Petition for Reconsideration, which is not appropriate in the procedural position in which K.L. finds itself. Even if Mr. Lee's filing is construed in the procedural light most favorable to KL, it fails as a defense on its face. His reply raises no adequate legal or factual defenses,

ORDER NO. 24974  
DOCKET NO. 910087-TC  
PAGE 3

fails to request a formal hearing, and effectively constitutes a default.

In light of Mr. Lee's assertions, we make the following findings:

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) We could not have closed the matter on November 26, 1990 because we did not consider the matter until March 12, 1991.
- (d) Our staff was not obligated to inform KL 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 KL regularly checks the telephones' functions, and that Items 1 and 21 of the evaluation form 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 telephones, various mechanisms are available to deal with these problems. The issue in this docket is not the availability of answer supervision and connection, but rather whether KL is providing PATS in accordance with our rules and requirements.

ORDER NO. 24974  
DOCKET NO. 910087-TC  
PAGE 4

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, we find it appropriate to impose the \$2,000 fine proposed in Order No. 24341.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that KL Industries, Inc. be fined \$1,000 for violation of Rule 25-24.515(2), Florida Administrative Code, and an additional \$1,000 for misrepresenting the violation to our staff. It is further

ORDERED that KL Industries, Inc. shall certify within 30 days that all of its pay telephones comply with the rules regulating pay telephone service providers. It is further

ORDERED that this docket remain open pending payment of the fine by KL Industries, Inc.

By ORDER of the Florida Public Service Commission, this 26th day of AUGUST, 1991.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

JKA

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

ORDER NO. 24974  
DOCKET NO. 910087-TC  
PAGE 5

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 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 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 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.