

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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FPSC-RECORDS/REPORTING

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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: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

DWC

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.

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

July 29, 1999

Mr. Eric Brown
Digital Network Operator Services, Inc.
400 East Centre Park, Suite 100
DeSoto, TX 75115

CERTIFIED

Dear Mr. Brown:

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, Digital 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 16, 1999:

1. Please identify all circumstances in which an overcharge may have occurred (i.e. payphones, 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 Digital's proposal to refund consumers should overcharges be determined?
6. When will Digital 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) 413-6546.

Sincerely,


Kelly Biegalski
Regulatory Analyst
Bureau of Service Evaluation

Enclosure