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MEMORANDUM

DECEMBER 23, 1997

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

FROM: DIVISION OF COMMUNICATIONS (HAWKINS) *PHS*
DIVISION OF LEGAL SERVICES (COX) *WLC*

RE: DOCKET NO. ~~971257~~ TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST PAY TELE COMMUNICATIONS, INC. FOR VIOLATION OF RULES 25-24.520(1)(a) and (b), FLORIDA ADMINISTRATIVE CODE, REPORTING REQUIREMENTS AND 25-4.043, FLORIDA ADMINISTRATIVE CODE, RESPONSE TO COMMISSION STAFF INQUIRIES.

AGENDA: 01/06/98 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\971257.RCM

CASE BACKGROUND

Pay Tele Communications, Inc. (Pay Tele) is a provider of pay telephone service. The Commission granted Pay Tele permission to provide pay telephone service on October 1, 1993. Pay Tele holds certificate number 3451. According to local exchange company records, Pay Tele owns and operates four pay telephones in Florida. Pay Tele reported gross operating revenues of \$10,059.57 on its Regulatory Assessment Fee Return for the period January 1, 1996, through December 31, 1996. As a provider of pay telephone service in Florida, Pay Tele is subject to the rules and regulations of this Commission.

On April 14, 1997, staff completed a service evaluation on a payphone owned by Pay Tele located at 556 E. SR 44 in Wildwood, Florida. The phone had more than 10 violations of Commission rules, including:

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- . no certificate name, pay telephone number or address displayed;
- . calls could not be made or received;
- . no number displayed for refunds or repairs;
- . no directory was available;
- . 911 center could not verify street address of the phone;
- . no LEC disclaimer; and
- . no clear and accurate dialing instructions displayed.

On April 23, 1997, staff mailed a letter along with a Service Evaluation Correction Form to Pay Tele requesting an explanation of what action would be taken to correct the violations. Staff requested a response within 15 days. Staff did not receive a response from Pay Tele after the 15 day deadline and mailed a certified letter to the company on May 9, 1997. The return card was signed by C. Perotka, but to date no response has been received from the company. Staff called the phone number in the Master Commission Directory May 30, June 16, and June 23 and left messages each time. On June 30, 1997, staff did reach Mr. Perotka by phone and he said he would respond. Then staff called on July 10, July 22, July 28, 1997 and August 1, 1997 and left messages. On August 7, 1997, an answering service took staff's message for Pay Tele. To date, staff has not received a response. Presently, the number for Pay Tele rings with no answer. Pay Tele also owns a phone at 5565 W. Irlo Bronson Memorial Highway in Kissimmee that is not in service.

Pay Tele is in apparent violation of Commission rules, refuses to respond to Commission staff inquiries and has not complied with reporting requirements. This is staff's recommendation that the Commission should issue a show cause order regarding these violations.

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DISCUSSION OF ISSUES

ISSUE 1: Should Pay Tele Communications, Inc. be ordered to show cause why it should not be fined \$3,250 pursuant to Section 364.285, Florida Statutes, or have its Certificate No. 3451 cancelled for violation of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, Rule 25-24.520, Florida Administrative Code, Reporting Requirements, and Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. The Commission should require Pay Tele to show cause in writing within 20 days of the issuance of the Commission's Order why it should not be fined \$750 for apparent violation of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, \$1,500 for violation of Rule 25-24.520, Florida Administrative Code, Reporting Requirements and \$1,000 for violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries or have its certificate cancelled. If Pay Tele fails to respond to the show cause, the fines will be deemed assessed. If the fines are not paid within five business days of the expiration of the show cause response period, Pay Tele's certificate should be cancelled. If the fines are paid, they should be forwarded to the office of the Comptroller for deposit in Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (HAWKINS)

STAFF ANALYSIS: Rule 25-24.515(3)(5)(8) and (11), Florida Administrative Code, states in pertinent part:

Each telephone station shall permit access to the universal telephone number "911" where operable...without requiring the use of a coin, paper money, or a credit card...shall be equipped with a legible sign, card, or plate of reasonable permanence which shall identify the following: telephone number and location address of such station, name of the certificate holder and the party responsible for repairs and refunds, address of responsible party, clear dialing instructions....a statement that the phone is not maintained by the local exchange company ...shall allow incoming calls to be received...where there are fewer than three telephones located in a group, a directory for the entire local calling area shall be maintained at each station.

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Rule 25-24.520(1)(a) and (b), Florida Administrative Code, states in pertinent part:

Each pay telephone service company shall file with the Commission's Division of Communications updated information for the following items within 10 days after a change occurs:

(a) The street address of the certificate holder including number, street, name, city, state and zip code, and the mailing address if it differs from the street address also. (b) Name, title, and phone number of the individual responsible for contact with the Commission.

In addition, Rule 25-4.043, Florida Administrative Code, states in pertinent part:

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 attempted unsuccessfully to contact Pay Tele by calling the number listed in the Master Commission Directory and by mailing regular and certified letters to the company. To date, this provider has not responded.

Staff believes a show cause is warranted in this case because Pay Tele's payphones are in violation of Commission pay telephone service rules. Pay Tele failed to respond to Commission staff's inquiries on several occasions, and Pay Tele is in violation of the Commission's reporting requirements. On June 30, 1997, staff spoke with Mr. Perotka, and he said he would respond to staff's inquiries. To date, staff has not received a response from him. Several messages were left on his voice mail, and subsequently, the phone line was disconnected with no forwarding information. Also, a certified letter was mailed and the return card was signed by C. Perotka. No response has been received.

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Staff believes that fines of \$750 for violation of Commission rules, \$1,500 for not responding to staff's inquiries, and a fine of \$1,000 for not reporting a new phone number and address are appropriate. Therefore, staff recommends that the Commission should issue a show cause order. If Pay Tele fails to respond to the Commission's show cause order, the fines should be deemed assessed. If the fines are not paid within five (5) business days of the expiration of the show cause response period, Pay Tele's certificate should be cancelled.

Under 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 day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any unlawful rule or order of the Commission, or any provision of Chapter 364, Florida Statutes, or revoke any certificate issued by it for any such violation. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is 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). Thus, intentional acts, such as Pay Tele's conduct at issue here, would meet the standard for a "willful violation."

Staff believes that Pay Tele's apparent conduct in violating pay telephone service rules, failing to respond to staff inquiries and failing to file updated information within 10 days after a change occurs 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 25-24.003, Florida Administrative Code, 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, " In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule."

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ISSUE 2: Should this docket be closed ?

RECOMMENDATION: No. This docket should remain open pending resolution of the show cause proceeding. If, however, Pay Tele fails to respond to the Commission's order to show cause, the company's certificate should be cancelled, and the docket should be closed administratively. **(COX)**

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, Pay Tele will have 20 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate cancelled. If Pay Tele timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding.

If Pay Tele fails to respond to the show cause order, the fine should be deemed assessed, and if its not paid within five (5) business days from the date of the order, Pay Tele's certificate should be cancelled and this docket should be closed.