

In Re: Initiation of show cause proceedings against Corporate Services Telcom, Inc. for violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection.

Docket No. 980950-TI Filed: October 13, 1998

RECORDS AND REPORTING

MOTION OF CORPORATE SERVICES TELCOM, INC., FOR MORE DEFINITE STATEMENT

Corporate Services Telcom, Inc ("CST"), by and through its undersigned counsel and pursuant to Commission Rule 25-22.037, Florida Administrative Code, moves the Commission to enter an Order containing a more definite statement of the allegations of Order No. PSC-98-1265-SC-TI, issued September 23, 1998, and in support thereof states:

1. Order No. PSC-98-1265-SC-TI ("the Order") refers to 55 complaints against CST alleging unauthorized carrier changes, and proposes to fine CST the sum of \$550,000.00 based upon those 55 alleged violations. The allegations in the Order are insufficient as a matter of law for the following reasons:

(a) CST is entitled to a specific delineation of the allegations within the Order, as a charging instrument, sufficient to place CST on notice of the charges against it and to enable CST to respond thereto. The Order fails to identify 50 of the 55 alleged violations, and for the five named customer complaints fails to state specifically the reason why the alleged violations constitute willful violations of Rule 25-4.118.

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(b) The Commission has the burden in this proceeding to prove by clear and competent evidence the elements of each of the alleged violations.

(c) The Order does not support the Commission's decision to include in the show cause order 50 unnamed and unexplained customer complaints. In voting to issue the Order, the Commission failed to consider whether 50 of the 55 allegations of unauthorized carrier charges warranted issuance of a show cause order for the purposes of assessing a fine or penalty.

2. The Order is the equivalent of an administrative complaint. As such, it must set out allegations with a reasonable degree of certainty sufficient to put CST on notice of the specific allegations of rule violations upon which the Commission bases its action. Only with such a degree of specificity can a respondent prepare a defense. Hunter v. Department of Professional Regulation, 458 So. 2d 842 (Fla. 2d DCA 1984); Dubin v. Department of Business Regulation, 262 So. 2d 273 (Fla. 1st DCA 1972).

3. The Order identifies by customer name only five of the alleged 55 customer complaints asserted to be the basis of the proceeding. The Order is legally insufficient to meet the Commission's burden and justify moving forward with this proceeding. At a minimum, the Order must provide with respect to each customer complaint on which the Commission intends to proceed:

- (a) the name of the complaining customer;
- (b) the date the complaint was received;

(c) the facts alleged by the complaining customer which the Commission believes, if proven, constitute willful violation of a rule, order or provision of Chapter 364; and

(d) the rule, order or statute alleged to have been violated.

4. The Order does not rise to the level of specificity in a charging order approved by the Supreme Court in Commercial Ventures, Inc. v. Beard, 595 So. 2d 97 (Fla. 1992).

5. The Commission did not consider and evaluate each alleged violation for inclusion in its Order to Show Cause, and cannot delegate that function to its Staff. Absent explicit statutory authority, an agency can delegate only ministerial functions to its staff. Florida Dry Cleaning and Laundry Board v. Economy Cash and Carry Cleaners, 197 So. 350 (Fla. 1940).

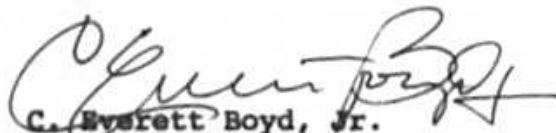
6. The Staff Recommendation adopted by the Commissioners when voting to issue the Order directed to CST referred to 55 complaints, but gave only five "examples" of specific allegations. The decision to charge a carrier with violations of a Commission rule and place the carrier in jeopardy of a fine or loss of its certificate is not a ministerial function.

7. When the Commissioners voted to issue the Order, they had no information before them regarding 50 of the 55 complaints and alleged violations. The Commission, with respect to initiation of a show cause proceeding, cannot delegate to its Staff the decision as to which allegations to pursue and, in this docket, could not

assess whether the other 50 complaints warrant such a proceeding based on the five examples.

WHEREFORE, Corporate Services Telcom, Inc., moves the Commission to enter an Order delineating the allegations which the Commission asserts constitutes willful violations of its rules, for which the Commission intends to offer proof, and on which the Commission proposes to base any fine or penalty in this proceeding.

Respectfully submitted,

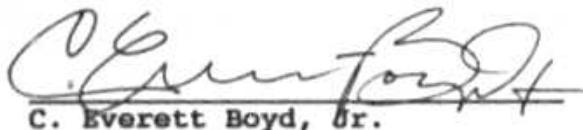


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by hand delivery on Catherine Bedell, Esq., of the Florida Public Service Commission, Division of Legal Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, this 13th day of October 1998.



C. Everett Boyd, Jr.