



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECORDS AND REPORTING

JUN 24 AM 11:43

RECEIVED-FPSC

DATE: JUNE 24, 1999

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

FROM: DIVISION OF LEGAL SERVICES (CALDWELL) *Dave CB*
DIVISION OF COMMUNICATIONS (BIEGALSKI) *CB*

RE: DOCKET NO. 990782-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST TEL CALL COMMUNICATION INC. FOR VIOLATION OF RULE 25-24.515, FLORIDA ADMINISTRATIVE CODE, PAY TELEPHONE SERVICE

AGENDA: 07/06/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\990782.RCM

CASE BACKGROUND

- March 29, 1999 - Tel Call Communication Inc.'s (Tel Call) 1998 regulatory assessment fee return reported gross intrastate revenues of \$6,896 and 112 pay telephones in operation.
- February 16, 1999 - Staff performed a routine service evaluation on a pay telephone operated by Tel Call and found apparent violations as presented in Attachment A.
- April 3, 1999 - Staff received a Service Violation Correction Form from Tel Call signifying that all apparent violations were corrected.
- April 21, 1999 - Staff reevaluated the pay telephone station and again found the apparent violations as presented in Attachment A.

DOCUMENT NUMBER-DATE

07655 JUN 24 99

FPSC-RECORDS/REPORTING

DOCKET NO. 990782-TC
DATE: June 24, 1999

DISCUSSION OF ISSUES

ISSUE 1: Should Tel Call Communication Inc. be ordered to show cause why a fine of \$200 for apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, should not be imposed or certificate number 3715 should not be canceled?

RECOMMENDATION: Yes. The Commission should order Tel Call to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 3715 canceled or be fined \$200 for apparent violation of Rule 25-24.515, Florida Administrative Code. Tel Call's response must contain specific allegations of fact or law. If Tel Call fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 3715 should be canceled. If the fine is paid it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (Biegalski)

STAFF ANALYSIS: Staff performed a service evaluation on a pay telephone station operated by Tel Call on February 16, 1999. Through written correspondence, staff notified Tel Call of the apparent violations.

Staff performed a reevaluation of the same pay telephone station on April 21, 1999. Although Tel Call reported that all violations had been corrected, the table provided as Attachment A (page 5) depicts the apparent rule violations discovered in the first inspection that were still present in the reevaluation.

By 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 offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's 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).

Staff believes that Tel Call's conduct in providing pay telephone services in apparent violation of Commission Rule 25-24.515, 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, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that

DOCKET NO. 990782-TC

DATE: June 24, 1999

"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 Tel Call's conduct in issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission find that Tel Call's apparent violations of Rule 25-24.515, Florida Administrative Code, warrant issuance of a show cause order. In this regard, the Commission should order Tel Call to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 3715 canceled or be fined \$200 for apparent violation of Rule 25-24.515, Florida Administrative Code. Tel Call's response must contain specific allegations of fact or law. If Tel Call fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 3715 should be canceled. If the fine is paid it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, then Tel Call will have 21 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 canceled. If Tel Call timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the fine is paid, it should be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, and this docket should be closed. Staff recommends that if Tel Call fails to respond to the Order to Show Cause, and the fine is not received within five business days after the expiration of the show cause response period, Tel Call's certificate should be canceled and this docket closed. (Caldwell)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then Tel Call will have 21 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 canceled. If Tel Call timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the fine is paid, it should be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, and this docket should be closed. Staff recommends that if Tel Call fails to

DOCKET NO. 990782-TC

DATE: June 24, 1999

respond to the Order to Show Cause, and the fine is not received within five business days after the expiration of the show cause response period, Tel Call's certificate should be canceled and this docket closed.

DOCKET NO. 990782-TC
DATE: June 24, 1999

ATTACHMENT A

Pay Telephone Station Number	25-24.515(9)(a)	
	Correct Address of Location Not Listed	Legible/Correct Telephone Number Not Posted
407-293-9675	X	X