

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Telecommunications Cooperative Network, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 992029-TI
ORDER NO. PSC-00-0312-SC-TI
ISSUED: February 17, 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 AND REQUIRING
WRITTEN RESPONSE TO STAFF QUESTIONS

BY THE COMMISSION:

I. Background

On March 25, 1999, Telecommunications Cooperative Network, Inc. (TCN) obtained Florida Public Service Commission Interexchange Telecommunications Certificate Number 5808. On August 5, 1999, our staff mailed a certified letter to TCN requesting information pertaining to its operator service provider rates listed in its tariff. Our staff requested a response by August 20, 1999. The certified letter is appended to this Order as Attachment A which by reference, is incorporated herein.

On August 9, 1999, TCN signed for and received the certified letter. To date, we have not received a response.

II. Apparent Violation

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, provides the following:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints

DOCUMENT NUMBER-DATE

02180 FEB 17 8

FPSC-RECORDS/REPORTING

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 TCN on August 5, 1999, and requested a written response by August 20, 1999. The letter was signed for and received by TCN on August 9, 1999. To date, we have not received a response from TCN. In this regard, it appears that TCN is in violation of Rule 25-4.043, Florida Administrative Code.

III. Show Cause

Pursuant to 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 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).

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 TCN's conduct at issue here, would meet the standard for a "willful violation." We find that TCN's conduct in failing to respond to our staff's inquiries in apparent violation of Commission Rule 25-4.043, Florida Administrative Code, has been "willful" in the sense intended by Section 364.285, Florida Statutes.

Accordingly, TCN shall show cause in writing within 21 days of the issuance of this Order why it should not have Certificate Number 5808 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. TCN's response shall contain specific allegations of fact or law. If TCN fails to respond to this Order to Show

ORDER NO. PSC-00-0312-SC-TI
DOCKET NO. 992029-TI
PAGE 3

Cause, and the fines are not paid within 10 business days after the 21 day show cause period, Certificate Number 5808 shall be canceled.

III. Response to Staff Questions

TCN shall provide a written response addressing the questions raised in our staff's August 5, 1999, correspondence within ten business days of the issuance of this Order.

IV. Conclusion

If TCN 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 our staff's August 5, 1999, correspondence.

If the requested information is not provided within ten business days after the issuance of this Order, this docket shall remain open pending the initiation of further show cause proceedings. If TCN provides the requested information and pays the fine, this docket shall be closed administratively.

Any fines received by the Commission shall be forwarded to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

Therefore, it is

ORDERED by the Florida Public Service Commission that Telecommunications Cooperative Network, Inc. shall show cause in writing within 21 days of the issuance of this Order why it should not have Certificate Number 5808 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. It is further

ORDERED that any response to this Order to Show Cause shall contain specific allegations of fact or law and shall identify the company name and the docket number. It is further

ORDERED that if Telecommunications Cooperative Network, Inc. fails to respond to this Order to Show Cause, and the fines are not paid within 10 business days after the 21 day show cause period, Certificate Number 5808 shall be canceled. It is further

ORDER NO. PSC-00-0312-SC-TI
DOCKET NO. 992029-TI
PAGE 4

ORDERED that Telecommunications Cooperative Network, Inc. shall provide a written response addressing the questions raised in our staff's August 5, 1999, correspondence, which is attached and incorporated herein by reference as Attachment A, within ten business days of the issuance of this Order. It is further

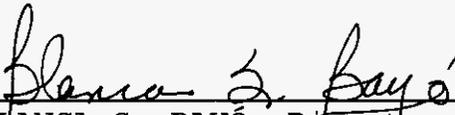
ORDERED that if Telecommunications Cooperative Network, Inc. timely responds to this Order, this docket shall remain open pending resolution of the show cause proceeding. This docket shall also remain open pending the receipt of the information requested in our staff's August 5, 1999, correspondence. It is further

ORDERED that if the requested information is not provided within ten business days after the issuance of this Order, this docket shall remain open pending the initiation of further show cause proceedings. It is further

ORDERED that any fines received by the Commission shall be forwarded to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. It is further

ORDERED that if Telecommunications Cooperative Network, Inc. provides the requested information and pays the fine, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 17th day of February, 2000.



BIANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)
TV

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 March 9, 2000.

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

August 5, 1999

Mr. David Altshuler
Telecommunications Cooperative Network, Inc.
20 University Road, 4th Floor
Cambridge, MA 02138

CERTIFIED

Dear Mr. Altshuler:

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, Telecommunications Cooperative 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 20, 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 Telecommunications Cooperative's proposal to refund consumers should overcharges be determined?
6. When will Telecommunications Cooperative 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,

Handwritten signature of Kelly Biegalski in black ink.

Kelly Biegalski
Regulatory Analyst
Bureau of Service Evaluation

Enclosure