

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause pro-) DOCKET NO. 911089-TC
ceedings against HENRY T. HARDEN for)
violation of Rules 25-4.043, F.A.C.,) ORDER NO. 25822
Response Requirement, and 25-24.515(6),)
F.A.C., Access to Interexchange Carriers.) ISSUED: 2/27/92
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

FINAL ORDER IMPOSING FINE
OR IN THE ALTERNATIVE CANCELLING
CERTIFICATE FOR VIOLATION OF RULE 25-24.515,
FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

Henry T. Harden (Mr. Harden) has been a certificated pay telephone service (PATS) provider since October 4, 1986. As a certificated PATS provider, Mr. Harden is subject to our jurisdiction.

On June 18 and 19, 1991, a service evaluator inspected three pay telephones operated by Mr. Harden. The evaluator noted several service violations, including the blocking of access to some interexchange carriers. Rule 25-24.515, Florida Administrative Code, provides:

Each telephone station which provides access to any interexchange carrier must provide access to all locally available interexchange carriers.

A letter addressed to Mr. Harden on July 12, 1991 requested the various deficiencies be corrected and a response describing the corrective measures be filed within 15 days. No response to this communication was filed. Mr. Harden's failure to respond to this first communication is an apparent violation of Rule 25-4.043, Florida Administrative Code, which provides:

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished within fifteen (15) days of the inquiry.

When no response to the first communication was received, a second letter was sent by certified mail on August 15, 1991. The second letter again requested corrective action and a written response within 15 days. Mr. Harden filed a response to this second letter on August 30. In his response, Mr. Harden indicated that all violations had been corrected. However, when the telephones in question were subsequently evaluated on October 29 and 30, coin-free access to alternative interexchange carriers was still being denied. Denial of coin-free access is an apparent violation of terms of order No. 24101 which prohibits pay telephone instruments from charging for access to nonprescribed interexchange carriers.

On December 2, 1991, we issued Order No. 25424 requiring Mr. Harden to show cause why he should not be fined for failure to respond to staff communications in a timely manner and failure to provide coin-free access to all interexchange carriers. On December 23, 1991, Mr. Harden filed a response to Order No. 25424.

Essentially, Mr. Harden makes two arguments as to why he should not be fined for the violations cited in Order No. 25424. With regard to the alleged failure to respond to staff communications in a timely manner, Mr. Harden asserts that because he lives in a rural area and he is unable to check his mail more than two or three times per month, he was already late when he received the letter. He further asserted that he has subsequently started checking the mail once per week.

With regard to the alleged blocking of coin-free access to interexchange carriers, Mr. Harden asserts that at the time he responded to staff's second communication he had been assured by his service technician that the necessary violations could be corrected and so had responded "...in the form stating that the problem had been corrected." (Emphasis added) Mr. Harden also asserted that subsequent to his response to staff's second communication, he learned that the necessary parts were unavailable. The parts were not received until December, 1991, and the three pay telephones are now operating properly according to Mr. Harden.

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Essentially, Mr. Harden has admitted that all of the factual allegations set forth in Order No. 25424 are correct. Mr. Harden has attempted to argue that extenuating circumstances justified his actions and made a fine unnecessary.

While we are sympathetic to the problems of rural mail customers, such problems do not justify neglecting staff inquiries. We note that the second staff letter was mailed 35 days after the second communication and no response was ever received to the first communication. Mr. Harden must have received the first letter before the second was sent yet no attempt to respond, not even an interim attempt, appears to have been made. Mr. Harden's efforts to respond to staff inquiries appear to fall far short of reasonable diligence.

With regard to the failure to allow coin-free access, Mr. Harden had asserted in his response to staff's second inquiry that the violation had been corrected. In his response to Order No. 25424, Mr. Harden also stated that a "...day or two later..." he learned that the correction could not be made until parts were received. In spite of this new information, Mr. Harden made no effort to correct his response to staff's second inquiry. Furthermore, Mr. Harden does not assert that any effort was made to seek an alternative source of parts or service. Again, Mr. Harden appears to be admitting to the factual allegations and arguing that his own lack of diligence is an adequate defense to a proposed penalty.

Mr. Harden has failed to request a formal hearing and has not raised any legal or factual issues that would warrant a hearing. Consequently, we find that Mr. Harden's response to Order No. 25424 is an admission of the facts, a default, and a waiver of the right to a hearing.

Based on Mr. Harden's admission to the factual allegations and his failure to set out any legal defense to these allegations, we find that a fine should be imposed. We further find that the fine amount should be set at \$500.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Henry T. Harden shall be fined \$500 for violation of Rules 25-4.043 and 25-24.515(6), Florida Administrative Code. It is further

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ORDERED that if Henry T. Harden elects to voluntarily cancel Certificate No. 122, the fine shall not be imposed, and this docket shall be closed. It is further

ORDERED that if Henry T. Harden fails to respond to this Order, Certificate No. 122 shall be cancelled, no fine imposed, and the docket closed. It is further

ORDERED that any protest of this Order shall be filed pursuant to the requirements set forth below. It is further

ORDERED that this docket shall remain open 30 days to permit Mr. Harden to pay the fine and then this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 27th day of FEBRUARY, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

JKA

By: Kay Flynn
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of

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Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer 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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.