

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Initiation of show cause ) DOCKET NO. 920569-TP  
proceedings against Cabana Inn ) ORDER NO. PSC-92-0645-FOF-TP  
for violation of Section ) ISSUED: 07/13/92  
364.3376(5), Florida Statutes, )  
and Rule 25-4.043, Florida )  
Administrative Code, Response to )  
Commission Staff Inquiries. )  
\_\_\_\_\_ )

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

ORDER TO SHOW CAUSE WHY  
A FINE SHOULD NOT BE IMPOSED

BY THE COMMISSION:

On August 8, 1991, staff of the Department of Business Regulation (DBR) inspected the Cabana Inn motel located at 2525 South Tamiami Trail, Sarasota, Florida. DBR cited the motel for violating the notice requirement of Section 364.3376(5), Florida Statutes, and referred the matter to this agency for appropriate action.

On November 20, 1991, Commission staff sent a letter to the Cabana Inn motel informing the motel that it appeared to be violating Section 364.3376(5). The letter requested a written response within fifteen (15) days as mandated by Rule 25-4.043, Florida Administrative Code. The motel failed to respond as advised.

On December 20, 1991, our staff sent a second letter via certified mail to the motel. This letter also requested a response and further advised that failure to correct the violation and respond to the Commission could result in the Commission issuing a Show Cause Order against Cabana Inn. The signed certified mail return receipt card indicates the motel received the letter on December 26, 1991. Although the Cabana Inn received this letter, it again failed to respond as advised.

DOCUMENT NUMBER-DATE

07560 JUL 13 1992

PSC-RECORDS/REPORTS

On February 6, 1992, Commission staff re-evaluated the Cabana Inn and found the motel had still not displayed the required notice information as mandated by Section 364.3376(5).

On March 25, 1992, our staff mailed another letter to the Cabana Inn which advised of its continued apparent violation of Section 364.3376(5) and requested a response within fifteen (15) days. The motel once again failed to respond to this letter.

On April 30, 1992, our staff sent a fourth letter, via certified mail, advising the motel that failure to correct the violation and to respond to the Commission could result in the Commission issuing a Show Cause Order against Cabana Inn. The signed certified mail return receipt card indicates the motel received the letter on May 4, 1992. Although the motel received this fourth letter, it nevertheless failed to respond as advised.

Section 364.3376(5) states:

Each call aggregator shall post in the immediate vicinity of each telephone available to the public the name of the operator service provider, a toll-free customer service number, a statement that rate quotes are available upon request, and instructions on how the end-user may access other operator service providers and such other information determined by the commission to be necessary in the public interest.

Additionally, Section 364.3376(11) states:

The commission shall have the responsibility for conducting an effective program of random, no-notice compliance investigations of the operator services providers and call aggregators operating within the state. When the commission finds a blocking violation, it shall determine whether the blocking is the responsibility of the call aggregator or the operator services provider and may fine the responsible party in accordance with §364.285. Upon the failure of the responsible party to correct a violation within a mandatory time limit established by the commission or upon a proven pattern of intentional blocking, the commission shall order the discontinuance of the call aggregator's telephone service or revoke the operator services provider's certificate, as applicable.

Rule 25-4.043 provides:

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.

Also, Section 364.285(1), Florida Statutes provides:

The Commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter which 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 this chapter a penalty for each offense of not more than \$25,000, which penalty shall be fixed, imposed, and collected by the commission; . . . . Each day that such refusal or violation continues constitutes a separate offense. . . .

Finally, Rule 25-4.113(1), F.A.C. provides in pertinent part:

As applicable, the utility may refuse or discontinue telephone service under the following conditions provided that, unless otherwise stated, the customer shall be given notice and allowed a reasonable time to comply with any rule or remedy any deficiency:

(a) For non-compliance with and/or violation of any State or municipal law, ordinance or regulation pertaining to telephone service.

(e) For non-compliance with and/or violation of the Commission's regulations or the utility's rules and regulations on file with the Commission, provided five (5) working days' written notice is given before termination.

In summary, the information required by Section 364.3376(5) was not present when the Department of Business Regulation inspected the Cabana Inn on August 8, 1991, nor when Commission staff inspected the motel on February 6, 1992. Commission staff mailed the motel four (4) separate letters informing it of the violations. The motel failed to respond to any of the letters.

Upon consideration, we find it appropriate to require Cabana Inn to show cause why a fine should not be imposed in the amount of \$250 because Cabana Inn has:

- 1) Failed to provide the information required by Section 364.3376(5); and
- 2) Failed to respond to the Florida Public Service Commission as required by Rule 25-4.043.

If Cabana Inn fails to respond within the time period set forth below, such failure will constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), F.A.C., and will further constitute a default pursuant to Rule 25-22.037(4), F.A.C. Such a default will be effective on the day subsequent to the date set forth below.

In the event of a default, Cabana Inn will be required to pay the fine and correct the violations set forth above within thirty (30) days following the default date, or this Commission will direct the appropriate local exchange telephone company to terminate telephone service to Cabana Inn pursuant to Rule 25-4.113(1), F.A.C., and Section 364.3376(11), Florida Statutes, until the fine is paid and the violations corrected. In the event of a default, this Notice is the only notification that Cabana Inn will receive prior to termination of its telephone service for failure to pay the fine and correct the violations.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Cabana Inn shall show cause why they should not be fined \$ 250 for the violations set forth herein. It is further

ORDERED that any response to this Order shall be filed pursuant to the requirements below. It is further

ORDERED that failure to respond within the time period set forth below shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and shall constitute a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such a default shall be effective on the day subsequent to the date set forth below. It is further

ORDERED that upon default, Cabana Inn is required to pay the fine and correct the violations set forth herein within thirty (30) days following the default date. It is further

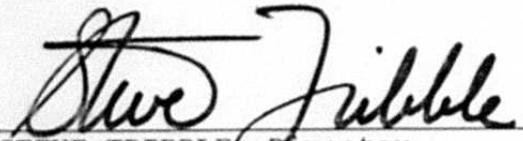
ORDER NO. PSC-92-0645-FOF-TP  
DOCKET NO. 920569-TP  
PAGE 5

ORDERED that, in the event of a default, failure to pay the fine and correct the violations within thirty (30) days after default shall result in this Commission directing the appropriate local exchange telephone company to terminate telephone service to Cabana Inn pursuant to Rule 25-4.113(1), Florida Administrative Code, and Section 364.3376(11), Florida Statutes, until the fine is paid and the violations corrected. It is further

ORDERED that, in the event of a default, this is the only notice that Cabana Inn will receive prior to termination of its telephone service for failure to pay the fine and correct the violations. It is further

ORDERED that in the event of a default, this docket shall be closed administratively; otherwise, this docket shall remain open pending resolution of the show cause process.

By ORDER of the Florida Public Service Commission, this 13th day of July, 1992.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )  
PLT

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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on August 3, 1992.

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 pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(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.