

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show) DOCKET NO. 920816-TP
cause proceedings against) ORDER NO. PSC-92-1101-FOF-TP
HOWARD JOHNSON MOTOR LODGE for) ISSUED: 10/01/92
violation of Section)
364.3376(5), F.S., and Rule)
25-4.043, F.A.C., 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 May 13, 1992, the Department of Business Regulation (DBR) staff inspected Howard Johnson Motor Lodge located at 2075 West State Road 84, Ft. Lauderdale, Florida, and determined the notice information required by Section 364.3376(5), Florida Statutes, was not displayed. In addition, DBR staff reported that access to some or all locally available interexchange carriers was not being provided, in violation of Section 364.3376(11), Florida Statutes. DBR staff then referred these violations to the Florida Public Service Commission for appropriate handling.

On June 29, 1992, Commission staff sent a letter to Howard Johnson Motor Lodge advising that a recent inspection indicated an apparent violation of Section 364.3376(5) and (6). The letter requested that the violations be corrected and that a written response be provided to staff within fifteen (15) days as required by Rule 25-4.043, Florida Administrative Code. Howard Johnson Motor Lodge failed to respond to this letter.

On July 21, 1992, Commission staff sent a second letter to Howard Johnson Motor Lodge via certified mail. This letter also requested a response and further advised that failure to correct the apparent violation and respond to our staff could result in the Commission issuing a Show Cause Order against Howard Johnson Motor Lodge. Howard Johnson Motor Lodge failed to respond as advised, although the signed certified mail return receipt card indicates it received this letter.

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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 or 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 DBR staff inspected Howard Johnson Motor Lodge on May 13, 1992. Also, Howard Johnson Motor Lodge was blocking access to some or all locally available interexchange carriers, in violation of Section 364.3376(11), Florida Statutes. Commission staff notified Howard Johnson Motor Lodge of the violations in two separate letters. Howard Johnson Motor Lodge failed to respond to either letter.

Upon consideration, we find it appropriate to require Howard Johnson Motor Lodge to show cause why a fine should not be imposed in the amount of \$ 500 because Howard Johnson Motor Lodge has:

- 1) Failed to provide the information required by Section 364.3376(5);
- 2) Failed to provide access to some or all locally available interexchange carriers in violation of Section 364.3376(11); and
- 3) Failed to respond to the Florida Public Service Commission as required by Rule 25-4.043.

If Howard Johnson Motor Lodge 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, Howard Johnson Motor Lodge 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 Howard Johnson Motor Lodge 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 Howard Johnson Motor Lodge 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 Howard Johnson Motor Lodge shall show cause why the Company should not be fined \$ 500 for the violations cited 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, Howard Johnson Motor Lodge is required to pay the fine and correct the violations set forth herein, if it has not already done so, within thirty (30) days of the default date. It is further

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 Howard Johnson Motor Lodge 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 Howard Johnson Motor Lodge will receive prior to termination of its telephone service for failure to pay the fine and correct the violations. It is further

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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 1st day of October, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

PLT

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.

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 October 21, 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.