

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 950433-TC
certificate to provide pay)
telephone service by South)
Telecommunication, Inc.)
_____))
In Re: Initiation of show cause) DOCKET NO. 960124-TC
proceedings against Wlberth) ORDER NO. PSC-96-0388-FOF-TC
Gaviria for violation of Service) ISSUED: March 20, 1996
Standards Rules 25-24.515 and)
25-24.512, F.A.C.)
_____))

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER TO SHOW CAUSE

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING APPLICATION FOR
CERTIFICATE TO PROVIDE PAY TELEPHONE SERVICE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that our denial of the application to provide pay telephone service, discussed below in Section I, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Application for Certificate to Provide Pay Telephone Service

On April 19, 1995, a Mr. Heiner Gaviria filed an application for a certificate to provide pay telephone service in the name of South Telecommunication, Inc. (STI).

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

By letter dated May 9, 1995, Liberty Tel, Inc. (Liberty) filed a complaint against STI, alleging that it had received a number of letters stating that STI had entered into contracts with pay telephone location providers, and requesting that Liberty remove its pay telephones from these locations. Liberty also complained that STI had removed several of Liberty's telephones. Liberty further alleged that at least three of STI's pay telephones charged \$.25 for only ten minutes, blocked 10XXX access, charged incorrect rates for extended calling areas, blocked incoming calls, and failed to route 0+ local calls to the local exchange company (LEC). Finally, Liberty provided a copy of a sign, from a pay telephone located in Miami, which identifies STI as the service provider.

In addition to the above, we also received a letter from a Mr. Alberto Menendez, dated October 23, 1995, claiming that STI installed two pay telephones in front of his business. According to Mr. Menendez, soon thereafter, a truck knocked down the wire to the telephones, which then remained out of service for over five weeks. Mr. Menendez also complained that he was unable to contact STI despite repeated attempts and several messages.

In response to a staff inquiry regarding the allegation that STI is operating without a certificate, a Mr. Brian Fink, legal counsel for both STI and Wlberth Gaviria denied that STI is operating without a certificate. According to Mr. Fink, Mr. Gaviria acquires the access lines and operates the telephones, while STI provides the telephones and locations to Mr. Gaviria. Mr. Fink also argued that it was his "client's belief that the signs on the telephones were vandalized by removing the identification of the certificate holder (i.e., Wlberth Gaviria) and leaving the only identified party on the phone as South Telecommunications (sic), Inc."

During the course of its evaluation of the application and its investigation into Liberty's allegations, the staff of this Commission learned that Wlberth Gaviria, the brother of Heiner Gaviria, and the holder of Certificate No. 3320, is an officer of STI. Based upon his affiliation with STI, staff informed STI that it would not recommend that STI's application be granted, in accordance with Rule 25-24.511(4), Florida Administrative Code, which prohibits any entity from holding multiple pay telephone certificates. In response, STI stated that it only desired to operate under one certificate, in STI's name, and would consent to cancelling Wlberth Gaviria's certificate if STI's application was granted. Since staff could not guarantee that STI's application would be approved, Wlberth Gaviria refused to request that his certificate be canceled.

In consideration of the letters sent to Liberty and Mr. Menendez's complaint, it appears that STI is providing service without a certificate, in violation of Section 364.3375(1)(a), Florida Statutes. In addition, it appears that STI wilfully misrepresented its role in providing service. When coupled with the fact that Wlberth Gaviria is already a certificate holder, along with numerous service standards violations found on his pay telephones, discussed below, we find it appropriate to deny STI's application for a certificate to provide pay telephone service.

II. Service Standards Violations

As a result of Liberty's allegations regarding service standards violations, staff inspected 63 pay telephones operated by Mr. Gaviria, and found at least 336 violations of Rule 25-24.515, Florida Administrative Code. Staff notified Mr. Gaviria of each of the violations, suggested that he correct the violations and inspect and correct his other pay telephones for similar violations. In addition, staff performed follow-up inspections of some of the instruments reportedly corrected, only to find the same violations.

It appears that Mr. Gaviria does not have effective installation and maintenance procedures in place to ensure that his pay telephones comply with this Commission's rules. It also appears that he misrepresented his efforts at repairs, since follow-up inspections revealed repeat violations.

Mr. Gaviria has held Certificate No. 3320 since May 4, 1993. At the time of his application, Mr. Gaviria signed a statement that he had read and understood this Commission's rules concerning pay telephone service.

Further, under Rule 25-24.512, Florida Administrative Code, Improper Use of a Certificate, no certificate authorizing pay telephone service shall be sold, assigned, or transferred. By allowing STI's name to be used on his pay telephones, Mr. Gaviria appears to be in violation of Rule 25-24.512, Florida Administrative Code.

Based upon the foregoing, we find it appropriate to require Wlberth Gaviria to show cause, in writing, why he should not be fined, or why we should not cancel Certificate No. 3320, for his apparent violations of Rules 25-24.512 and 25-24.515, Florida Administrative Code. Mr. Gaviria's written response must contain specific allegations of fact and law. Should Mr. Gaviria fail to file a timely response, such failure shall constitute an admission

of all of the allegations contained herein, as well as a waiver of any right to a hearing.

It is therefore,

ORDERED by the Florida Public Service Commission that South Telecommunication, Inc.'s application for a certificate to provide pay telephone service is denied for the reasons set forth in Section I of this Order. It is further

ORDERED that, unless a person whose interests are substantially affected by the above provision files an appropriate petition in the form and by the date specified in the Notice of Further Proceedings or judicial review, Section I of this Order shall become final and Docket No. 950433-TC shall be closed. It is further

ORDERED that Wlberth Gaviria, the holder of Certificate No. 3320, shall show cause, in writing, why he should not be fined, or why we should not cancel Certificate No. 3320, for apparent violations of Rules 25-24.512 and 25-24.515, Florida Administrative Code as set forth in Section II of this Order. It is further

ORDERED that Mr. Gaviria's written response must contain specific allegations of fact and law. It is further

ORDERED that, should Mr. Gaviria fail to file a timely and appropriate response to Section II of this Order in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, such failure shall constitute an admission of the allegations set forth in the body of this Order, and a waiver of any right to a hearing.

By ORDER of the Florida Public Service Commission, this 20th day of March, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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.

The action in Section I of this Order, by which we proposed to deny the application for a certificate to provide pay telephone service, is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. 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 25-22.029(4), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 10, 1996.

In the absence of such a petition, this order, with respect to the denial of the application for a certificate to provide pay telephone service, shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

The show cause provisions in Section II of this Order are preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the show cause provisions of 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 9, 1996.

Failure to respond to the show cause provisions in Section II of this Order within the time set forth above shall constitute an

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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 this order becomes final and effective, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an 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. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.