

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Heartline Communications, Inc. for violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries; Rule 25-4.019, Florida Administrative Code, Records and Reports in General; and Rule 25-24.480(2)(A)(B), Florida Administrative Code, Records and Reports; Rule Incorporated.

DOCKET NO. 971306-TI
ORDER NO. PSC-97-1529-PCO-TI
ISSUED: December 5, 1997

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE
AND
DIRECTING CERTIFICATED INTEREXCHANGE
TELECOMMUNICATIONS PROVIDERS TO DISCONTINUE SERVICE

BY THE COMMISSION:

BACKGROUND

On January 13, 1997, Commission staff notified Heartline Communications, Inc., (Heartline) that the company's quality of service would be evaluated pursuant to Rule 25-21.026, Florida Administrative Code, and requested that the company furnish regular bills for the calls. To facilitate the evaluation, the company furnished a calling card and PIN number for 0+ test calls. The staff made test calls on February 7, 1997, evaluating timing and billing, call completion and transmission quality of the service provided by Heartline.

DOCUMENT NUMBER-DATE

12457 DEC-56

FPSC-REG/RS/REPORTING

On May 12, 1997, the staff notified Heartline by letter directed to company representative, Gloria Cross, that the required billing information for the test calls had not been received. The company did not respond. On June 5, 1997, the staff requested the information by certified mail, again directed to Ms. Cross. The company remained unresponsive and the staff repeated its request for the billing information during a telephone conversation with Ms. Cross on July 17, 1997. The staff requested the information a fourth time on July 29, 1997, by means of another certified letter. On October 3, 1997, the staff attempted to contact the company by telephone, but discovered that the telephone number was no longer in service with no forwarding information available. The staff has not received the billing information or an explanation for the company's failure to provide it as of the date of our decision in this matter.

We granted Heartline a certificate to provide interexchange telecommunications services in Order No. PSC-93-1568-FOF-TI, issued October 26, 1993. On September 5, 1996, we issued Order No. PSC-96-1123-AS-TI, in which we approved the company's offer of settlement concerning numerous complaints of unauthorized carrier changes. The settlement consisted of a settlement payment in the amount of \$50,000, as well as a number of provisions limiting the company's marketing activity.

On January 7, 1997, we issued Order No. PSC-97-0030-FOF-TI, approving transfer of control from Heartline to Total National Telecommunications, Inc. (TNT). When efforts to contact Heartline were unsuccessful, the staff attempted to contact TNT by telephone, but discovered that its telephone number was also no longer in service. On September 30, 1997, the staff learned that TNT filed a petition on September 12, 1997, for liquidation under Chapter 7 of the Bankruptcy Code in U.S. Bankruptcy Court, Southern District of Texas.

SHOW CAUSE

Response to Inquiries

Rule 25-4.043, Florida Administrative Code, provides that:

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

shall be furnished within fifteen (15) days from the date of the Commission inquiry.

As noted above, Heartline failed to respond four times to the staff's inquiries concerning the billing information for the February 7, 1997, calling card test calls. Thus, we find that the company is in apparent violation of Rule 25-4.043, Florida Administrative Code.

Billing Information

Rule 25-4.019 (1), Florida Administrative Code, provides that:

Each utility shall furnish to the Commission at such times and in such form as the Commission may require, the results of any required tests and summaries of any required records.

As already noted, Heartline failed repeatedly to produce the billing information related to the staff's toll timing and billing tests. These tests were not unusual. They were part of the staff's routine evaluation activity. Thus, we find that the company is in apparent violation of Rule 25-4.019, Florida Administrative Code.

Updated Information

Rule 25-24.480, Florida Administrative Code, provides that:

(2) Each company shall file updated information for the following items with the Division of Communications and the Division of Records and Reporting within 10 days after such changes occur:

(a) The address of the certificate holder's main corporate and Florida offices (if any) including street name and address and post office box, city, state and zip code.

(b) Telephone number, name, and address of the individual who is to serve as primary liaison with the Commission in regards to the ongoing Florida operations of the certificated company.

The staff was unable to reach Heartline by telephone on October 3, 1997, because the company's telephone number was no longer in service. Ten days passed since a change evidently occurred and the company did not file updated information as required. Thus, we find that the company is in apparent violation of Rule 25-24.480(2), Florida Administrative Code.

Conclusion

By 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 day a violation continues, 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, Florida Statutes, or revoke any certificate issued by us for any such violation. 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). Thus, intentional acts, such as Heartline's conduct at issue here, would meet the standard for a "willful violation."

We find that Heartline's conduct in failing to respond to staff inquiries and to file updated information within 10 days after a change has been "willful" in the sense intended by Section 364.285, Florida Statutes. 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, Florida Administrative Code, 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, "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule."

Accordingly, we find that Heartline's apparent violations of Rules 25-4.043, 25-4.019, and 25-24.480(2), Florida Administrative Code, rise to the level warranting that we issue a show cause order. We hereby direct Heartline to show cause in writing within 20 days of the issuance of this Order why it should not be fined in the amounts of \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code; \$15,000 for apparent violation of Rule 25-4.019, Florida Administrative Code; and \$500 for apparent violation of Rules 25-24.480(2), Florida Administrative Code, or

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have its certificate revoked. Pursuant to Section 364.285, Florida Statutes, any fines that may be levied shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285, Florida Statutes.

If Heartline fails to respond to this show cause order, the fines shall be deemed assessed. If the fines are not paid within five business days of the expiration of the show cause response period, Heartline's certificate shall be canceled.

DISCONTINUATION OF UNDERLYING INTRASTATE
INTEREXCHANGE TELECOMMUNICATIONS SERVICES

Rule 25-24.4701(3), Florida Administrative Code, states in part:

The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

We have ruled that if Heartline fails to respond to this show cause order, the fines proposed shall be deemed assessed and, if not paid within five business days of the expiration of the show cause response period, Heartline's certificate shall be canceled. If Heartline's certificate is canceled, any intrastate interexchange service offered by Heartline would be in violation of Rule 25-24.4701(3), Florida Administrative Code. Since we cannot readily identify which interexchange company provides service to Heartline, we hereby direct all certificated interexchange companies to discontinue service to Heartline, if Heartline fails to comply with the terms of this Order. Any interexchange company providing service to Heartline must contact this Commission at the conclusion of the show cause response period as set forth in this

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Order to determine whether Heartline's certificate has been canceled.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Heartline Communications, Inc., show cause in writing why it should not be fined in the amounts of \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code; \$15,000 for apparent violation of Rule 25-4.019, Florida Administrative Code; and \$500 for apparent violation of Rules 25-24.480(2), Florida Administrative Code, or have its certificate, Certificate No. 3494, canceled. It is further

ORDERED that any response to the Order to Show Cause filed by Heartline Communications, Inc., shall contain specific allegations of fact and law. It is further

ORDERED that any response to the Order to Show Cause shall be filed with the Director of the Division of Records and Reporting within 20 days of the issuance of this Order. It is further

ORDERED that upon receipt of Heartline Communications, Inc.'s response to the Order to Show Cause, and if it requests a hearing, further proceedings will be scheduled by the Commission, at which time Heartline Communications, Inc., will have an opportunity to contest the allegations in the body of this Order. It is further

ORDERED that if Heartline Communications, Inc., fails to file a timely response to the Order to Show Cause, such failure shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that any payment of fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. It is further

ORDERED that, if Heartline Communications, Inc.'s certificate is canceled as a result of this proceeding, all certificated interexchange companies shall discontinue providing intrastate long distance service for resale to Heartline Communications, Inc., at the conclusion of this proceeding. It is further


ORDERED that any certificated interexchange carriers providing service to Heartline Communications, Inc., shall contact this

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Commission at the conclusion of the response period indicated herein in order to determine the status of this proceeding. It is further

ORDERED that this docket shall remain open pending resolution of the Order to Show Cause.

By ORDER of the Florida Public Service Commission, this 5th day of December, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 26, 1997.

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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.