

MEMORANDUM

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December 12, 1997

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FPC Records Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BOWMAN) *RB* *MCB*

RE: DOCKET NO. 971218-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST TEL-SAVE, INC. D/B/A NETWORK SERVICES, INC. D/B/A THE PHONE COMPANY FOR VIOLATION OF RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES, AND RULE 25-4.019, F.A.C., RECORDS AND REPORTS IN GENERAL.

PCD
PSC-97-1575-PDF-TI

Attached is an ORDER TO SHOW CAUSE, to be issued in the above referenced docket. (Number of pages in order - 5)

JRB/and
Attachment
cc: Division of Communications
I: 971218.jrb

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Tel-Save, Inc. d/b/a Network Services, Inc. and d/b/a The Phone Company for violation of Rule 25-4.043, F.A.C., response to Commission Staff Inquiries, and Rule 25-4.019, F.A.C., Records and Reports in General.

DOCKET NO. 971218-TI
ORDER NO. PSC-97-1575-PCO-TI
ISSUED: December 15, 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

BY THE COMMISSION:

BACKGROUND

On January 13, 1997, our staff notified Tel-Save, Inc. d/b/a Network Services, Inc. d/b/a The Phone Company, (TPC) that it selected TPC as one of the Interexchange Companies (IXCs) to be evaluated as part of the Commission's normal service quality evaluation. The staff informed TPC that it would have to provide billing information when the staff completed its evaluation. In an effort to expedite the process, the staff made another request on January 23, 1997, by telephone and facsimile transmission. TPC responded on January 23, 1997, with a calling card and a pin number to allow staff to conduct their evaluation of timing, billing, call completion and transmission quality for 0+ and 1+ calls. Staff performed the 1+ call test on February 5, 1997, and the 0+ call test on February 17, 1997.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On June 20, 1997, our staff notified TPC, by facsimile letter, that the Commission had not received previously requested billing records and asked that the records be forwarded as soon as possible. Our staff made a subsequent request during a July 17, 1997, telephone conversation with Ms. Tina Tecce, TPC's Regulatory Affairs Manager. Staff made a third request for the billing records on July 29, 1997, by certified mail. TPC provided billing records for the 1+ evaluation calls on August 5, 1997, by facsimile transmission. On August 6, 1997, the staff requested a written explanation as to why the 0+ billing records had not been provided. TPC responded by facsimile transmission, on August 7, 1997, stating that it had no record of 0+ calls being made on its network using the pin number and access code that it had assigned to staff.

On August 29, 1997, by certified mail, staff informed TPC of its intent to initiate a proceeding wherein TPC would be required to show cause why it should not be fined for failure to comply with staff inquiries in apparent violation of Rule 25-4.019, Florida Administrative Code. TPC provided the 0+ billing information on October 3, 1997. TPC appeared at our Agenda Conference on November 18, 1997, and asserted that its failure to provide the billing information was primarily due to irregularities with its billing vendor.

SHOW CAUSE

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, requires that, "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." TPC failed to respond to numerous staff inquiries and, as previously stated TPC only furnished requested data after it was informed of the initiation of a show cause proceeding. Thus, we find that it appears that TPC has violated Rule 25-4.043, Florida Administrative Code.

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 Commission rule or order, or any provision of Chapter 364, Florida Statutes. Utilities are charged with knowledge of our 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 TPC's conduct at issue here, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, 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 that, "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule."

We find that TPC's apparent conduct in failing to respond to staff inquiries has been "willful" in the sense intended by Section 364.285, Florida Statutes, and thus, that conduct rises to a level warranting that a show cause order be issued. Therefore, we order TPC to show cause in writing within 20 days of this Order why it should not be fined in the amount of \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code. Pursuant to Section 364.285, Florida Statutes, any payment of fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund.

Our staff informs us of TPC'S willingness to resolve this issue, a willingness that we witnessed ourselves at our November 18, 1997, Agenda Conference. We are also aware of a potential offer of settlement that may resolve this matter. We encourage TPC to continue work with our staff to resolve this matter and ensure future compliance with our rules.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Tel-Save, Inc. d/b/a Network Services, Inc. d/b/a The Phone Company shall be required to show cause in writing why it should not be fined \$10,000 for violation of Rule 25-4.043, Florida Administrative Code. It is further

ORDERED that any response to the Order to Show Cause filed by Tel-Save, Inc. d/b/a Network Services, Inc. d/b/a The Phone Company 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 this Order. It is further

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ORDERED that upon receipt of Tel-Save, Inc. d/b/a Network Services, Inc. d/b/a The Phone Company's response to the Order to Show Cause, and upon its request for a hearing, further proceedings will be scheduled by the Commission, at which time Tel-Save, Inc. d/b/a Network Services, Inc. d/b/a The Phone Company will have an opportunity to contest the allegations in the body of this Order. It is further

ORDERED that if Tel-Save, Inc. d/b/a Network Services, Inc. d/b/a The Phone Company 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 in the event this Order becomes final, this docket shall remain open pending resolution of the order to show cause.

By ORDER of the Florida Public Service Commission this 15th day of December, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

JRB

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 January 5, 1998.

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.