

WV
DS for War



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: APRIL 19, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (J. FUDGE) *JF*
 DIVISION OF CONSUMER AFFAIRS (P. LOWERY) *PL*
 DIVISION OF COMPETITIVE SERVICES (M. WATTS) *MW*

RE: DOCKET NO. 010213-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST SOUTHERN STATES TELEPHONE, INC. FOR APPARENT VIOLATION OF RULES 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES, AND 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 05/1/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010213.RCM

APR 19 2001
11:53 AM

CASE BACKGROUND

- September 15, 1998 - Southern States Telephone, Inc. (SSTI) obtained Florida Public Service Commission alternative local exchange company (ALEC) certificate no. 5694.
- February 9, 2000 - SSTI reported \$26,343.00 in intrastate revenue for 1999.
- August 15, 2000 through August 31, 2000 - The Florida Public Service Commission received five consumer complaints (Attachment A, page 10) against SSTI.
- December 5, 2000 - Staff mailed the 2000 Regulatory Assessment Fee (RAF) form to SSTI.

DOCUMENT NUMBER-DATE

04862 APR 19 01

DIVISION OF RECORDS AND REPORTING

DOCKET NO. 010213-TX
DATE: April 19, 2001

- February 12, 2001 - Staff opened this docket to initiate show cause proceedings against SSTI for apparent violation of Rules 25-4.043 and 25-4.0161, Florida Administrative Code.
- February 20, 2001 - Staff mailed a delinquent notice to SSTI regarding the RAF.
- April 10, 2001 - To date, SSTI has neither responded to the complaints nor submitted its RAF.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285 and 364.336, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Southern States Telephone, Inc. to show cause in writing why it should not be fined \$10,000 per violation, for a total of \$50,000, or have certificate no. 5694 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. The Commission should order Southern States Telephone, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 per violation, for a total of \$50,000, or have certificate number 5694 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. SSTI's response should contain specific allegations of fact and law. If SSTI fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and the fine should be deemed assessed. If the fine is not paid within 10 business days after the end of the 21-day response period, then, in lieu of the fine, certificate number 5694 should be canceled administratively. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(Fudge/M. Watts)**

STAFF ANALYSIS: Rule 25-4.043, Florida Administrative Code, states:

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.

In four of the five complaints listed in Attachment A, page 10, staff sent the complaints to the company via facsimile and, upon receiving no response, sent late notices via facsimile. In one complaint, staff attempted to contact the company by calling the number listed in the Commission's Master Commission Directory (MCD). Staff called Patrick Freeman, SSTI's liaison in the MCD. He said he no longer works for SSTI. He told staff that SSTI was disconnected by BellSouth for non-payment and that another company was taking over the SSTI accounts and was working with BellSouth to restore their services. He said that Joe Kearney is SSTI's new liaison. Staff's attempts to contact Mr. Kearney were not

DOCKET NO. 010213-TX
DATE: April 19, 2001

successful. As of February 14, 2001, staff has not been able to get a response to this or any other complaint from SSTI.

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, 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. 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).

Staff believes that the conduct of SSTI, by failing to respond to Commission staff inquiries, in apparent violation of Rule 25-4.043, Florida Administrative Code, 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, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., 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, the Commission 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." Thus, any intentional act, such as the conduct of SSTI at issue here, would meet the standard for a "willful violation."

The recommended fine amount is consistent with previous amounts used for recent similar violations in Docket Nos. 000034-TI, Initiation of show cause proceedings against Carib Comm, Limited Partnership for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries; and fine assessment for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, and 000035-TI, Initiation of show cause proceedings against American Network Exchange, Inc. d/b/a AMNEX for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries; and fine assessment for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Therefore, since SSTI has not responded to Commission staff inquiries for more than seven months, staff believes the Commission should order Southern States Telephone, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 per violation, for a total of

DOCKET NO. 010213-TX
DATE: April 19, 2001

\$50,000, or have certificate number 5694 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. SSTI's response should contain specific allegations of fact and law. If SSTI fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and the fine should be deemed assessed. If the fine is not paid within 10 business days after the end of the 21-day response period, then, in lieu of the fine, certificate number 5694 should be canceled administratively. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should the Commission order Southern States Telephone, Inc. to show cause why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should order Southern States Telephone, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. The company's response should contain specific allegations of fact and law. If SSTI fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived, and the fine should be deemed assessed. If the fine and fees are not paid within ten business days after the Order becomes final, they should be forwarded to the Office of the Comptroller for collection. If the fine and fees are paid, the fine should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(Fudge/M. Watts)**

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, requires the payment of RAF by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of Administration's records show that SSTI had not paid its 2000 RAF in full, plus statutory penalty and interest charges. Therefore, it appears the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, and has not requested cancellation of its certificate in compliance with Rule 25-24.820, Florida Administrative Code. Staff believes that the failure of SSTI to pay its RAF constitutes a willful violation of a lawful rule of the Commission under the same legal analysis as set forth in Issue 1.

Accordingly, staff recommends that the Commission order Southern States Telephone, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. The company's response should contain specific allegations of fact and law. If SSTI fails to respond to the show cause order or request a hearing pursuant to Section 120.57,

DOCKET NO. 010213-TX
DATE: April 19, 2001

Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived, and the fine should be deemed assessed. If the fine and fees are not paid within ten business days after the Order becomes final, they should be forwarded to the Office of the Comptroller for collection. If the fine and fees are paid, the fine should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 1 is approved, SSTI will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If SSTI timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If SSTI fails to respond to the Order to Show Cause within the 21-day show cause response period and the fine is not received within ten business days after the expiration of the show cause response period, certificate number 5694 should be canceled and this docket may be closed administratively if all other issues are closed.

If staff's recommendation in Issue 2 is approved, SSTI will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed. If SSTI timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If SSTI fails to respond to the show cause order, the fine should be deemed assessed. If the fine and fees are not received within ten business days after the expiration of the show cause response period, they should be forwarded to the Office of the Comptroller for collection and this docket may be closed administratively if all other issues are closed. **(Fudge)**

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, SSTI will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If SSTI timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If SSTI fails to respond to the Order to Show Cause within the 21-day show cause response period and the fine is not received within ten business days after the expiration of the show cause response period, certificate number 5694 should be canceled and this docket may be closed administratively if all other issues are closed.

If staff's recommendation in Issue 2 is approved, SSTI will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed. If SSTI timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If SSTI fails to respond to the show cause order, the fine should be deemed assessed. If the fine and fees are not

DOCKET NO. 010213-TX
DATE: April 19, 2001

received within ten business days after the expiration of the show cause response period, they should be forwarded to the Office of the Comptroller for collection and this docket may be closed administratively if all other issues are closed.

DOCKET NO. 010213-TI
DATE: April 19, 2001

ATTACHMENT A

SOUTHERN STATES COMPLAINTS WITH NO RESPONSE

<u>COMPLAINT NO.</u>	<u>DATE RECEIVED</u>	<u>HOW SENT</u>
330621T	8/15/00	FAX
330745T	8/16/00	FAX
330772T	8/16/00	FAX, CERTIFIED LETTERS
331271T	8/18/00	FAX
333534T	8/31/00	FAX