

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 950352-TC
proceedings against Brian R.) ORDER NO. PSC-95-0625-FOF-TC
Albury for failure to comply) ISSUED: May 23, 1995
with Rule 25-24.515, F.A.C., Pay)
Telephone Service Standards.)
_____)

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

BY THE COMMISSION:

I. BACKGROUND

On October 5, 1994, we received a complaint that the pay telephone located at SW 135th Street and 137th Avenue in Miami was "totally deficient in terms of wheelchair accessibility." Our staff wrote to the pay telephone provider specified in the letter, MXC Communications. The company responded that it did not own the pay telephone at that location. We determined from local exchange company records that Brian R. Albury, holder of Certificate Number 2909, is the owner of the pay telephone, instrument number 305-232-9140, referenced in the letter.

Our staff wrote Mr. Albury on November 2, 1994 and requested that he respond to the customer complaint about this pay telephone by November 17, 1994. In December, 1994, Mr. Albury responded that the phone would be made accessible to the physically handicapped within a week. Our staff closed the complaint with the understanding that corrections would be made to make the pay telephone accessible.

On March 1, 1995, a consumer complained that neither of the two pay telephones located at SW 135th Street and 137th Avenue in Miami was accessible to handicapped persons. An engineer on our staff inspected the pay telephones on March 10, 1995. The inspection revealed that one of the pay telephones had been removed

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but the other pay telephone, instrument number 305-232-9140, was still not accessible to the physically handicapped. In addition, other violations of the pay telephone service rules were apparent.

In late March, 1995, one of our staff engineers inspected other pay telephones owned by Mr. Albury. The inspections found numerous apparent violations at eight other locations.

This is not our first complaint against Mr. Albury. Due to Mr. Albury's failure to provide timely responses in the past, we, by Order No. PSC-94-0351-FOF-TC, issued March 28, 1994, ordered Mr. Albury to show cause why he should not be fined or have his certificate cancelled. Mr. Albury's response offered no defense so we issued Order No. PSC-94-0723-FOF-TC on June 13, 1994 imposing a \$500 fine. Mr. Albury paid the fine on August 9, 1994 and that docket was closed.

Due to the customer complaints and other apparent violations, we find the following action to be appropriate. Each of the violations found during the inspections of Mr. Albury's pay telephones is described in Section II of this Order. Our conclusions and the action we take against Mr. Albury are described in Section III.

II. VIOLATIONS

A. INSTRUMENT NUMBER 305-232-9140

As outlined in Section I of this Order, Mr. Albury has been notified that this pay telephone is in apparent violation of the handicapped access standards as defined in Rule 25-24.515, Florida Administrative Code. In addition, there are other apparent violations of Rule 25-24.515, Florida Administrative Code, at this location. No current directory is available at this telephone, the correct address of the pay telephone location is not displayed, and the local exchange company disclaimer is not displayed.

B. INSTRUMENT NUMBER 305-235-9703

On April 4, 1995, Mr. Albury was notified of apparent violations of Rule 25-24.515, Florida Administrative Code, at this telephone. Our staff's inspection of this pay telephone revealed that the phone was not accessible to the physically handicapped, that the address of the party responsible for repairs and refunds was not displayed, that a current telephone directory was not available, that the name of the pay telephone provider was not displayed, and that the local exchange company disclaimer was not displayed.

C. INSTRUMENT NUMBER 305-232-8619

On April 4, 1995, Mr. Albury was notified of apparent violations of Rule 25-24.515, Florida Administrative Code, at this telephone. Our staff's inspection of this pay telephone revealed that the address of the party responsible for repairs and refunds was not displayed, that a telephone number for repairs and refunds was not displayed, that a current telephone directory was not available, that the correct address of the pay telephone location was not displayed, that the name of the pay telephone provider was not displayed, that the local exchange company disclaimer was not displayed, that clear and accurate dialing instructions were not displayed, and a statement of services not available was not displayed.

D. INSTRUMENT NUMBER 305-252-9133

On April 4, 1995, Mr. Albury was notified of apparent violations of Rule 25-24.515, Florida Administrative Code, at this telephone. Our staff's inspection of this pay telephone revealed that the address and phone number of the party responsible for repairs and refunds were not displayed, that a current telephone directory was not available, that the correct address of the pay telephone location was not displayed, that the name of the pay telephone provider was not displayed, that the local exchange company disclaimer was not displayed, that clear and accurate dialing instructions were not displayed, and a statement of services not available was not displayed.

E. INSTRUMENT NUMBER 305-378-8214

On April 4, 1995, Mr. Albury was notified of apparent violations of Rule 25-24.515, Florida Administrative Code, at this telephone. Our staff's inspection of this pay telephone revealed that the phone was not accessible to the physically handicapped, that the address and telephone number of the party responsible for repairs and refunds were not displayed, that a current telephone directory was not available, that the correct address of the pay telephone location was not displayed, that the name of the pay telephone provider was not displayed, that the local exchange company disclaimer was not displayed, that clear and accurate dialing instructions were not displayed, and a statement of services not available was not displayed.

F. INSTRUMENT NUMBER 305-232-8031

On April 4, 1995, Mr. Albury was notified of apparent violations of Rule 25-24.515, Florida Administrative Code, at this telephone. Our staff's inspection of this pay telephone revealed that the phone was not accessible to the physically handicapped, that the address and telephone of the party responsible for repairs and refunds were not displayed, that a current telephone directory was not available, that the correct address of the pay telephone location was not displayed, that the name of the pay telephone provider was not displayed, that the local exchange company disclaimer was not displayed.

G. INSTRUMENT NUMBER 305-252-9137

On April 4, 1995, Mr. Albury was notified of apparent violations of Rule 25-24.515, Florida Administrative Code, at this telephone. Our staff's inspection of this pay telephone revealed that the phone did not operate, that the address of the party responsible for repairs and refunds was not displayed, that a current telephone directory was not available, that the correct address of the pay telephone location was not displayed, and that the name of the pay telephone provider was not displayed.

H. INSTRUMENT NUMBER 305-232-9786

On April 4, 1995, Mr. Albury was notified of apparent violations of Rule 25-24.515, Florida Administrative Code, at this telephone. Our staff's inspection of this pay telephone revealed that the address of the party responsible for repairs and refunds was not displayed, that a current telephone directory was not available, that the correct address of the pay telephone location was not displayed, and that the name of the pay telephone provider was not displayed.

I. INSTRUMENT NUMBER 305-232-9238

On April 4, 1995, Mr. Albury was notified of apparent violations of Rule 25-24.515, Florida Administrative Code, at this telephone. Our staff's inspection of this pay telephone revealed that phone did not operate, that the address of the party responsible for repairs and refunds was not displayed, that a current telephone directory was not available, that the correct address of the pay telephone location was not displayed, and that the name of the pay telephone provider was not displayed.

III. CONCLUSION

For each of the apparent violations of Rule 25-24.515, Florida Administrative Code, described in Section II, we order that Brian R. Albury shall show cause, in writing, why he should not be fined and/or have his certificate cancelled. Mr. Albury's response must contain specific allegations of fact and law. If Mr. Albury fails to respond to this Order, the failure to respond will constitute an admission of the alleged violations and a waiver of a right to a hearing. Failure to respond will also result in the cancellation of Certificate Number 2909.

It is, therefore,

ORDERED by the Florida Public Service Commission that Brian R. Albury show cause, in writing, why he should not be fined and/or have his certificate cancelled for violations of Rule 25-24.515, Florida Administrative Code, as outlined in the body of this Order. It is further

ORDERED that Brian R. Albury's response shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order in the manner and by the date set forth in the Notice of Further Proceedings or Judicial Review section of this Order shall constitute an admission of the violations described in the body of this Order, a waiver of a right to a hearing, and cancellation of Certificate Number 2909.

By ORDER of the Florida Public Service Commission, this 23rd day of May, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Feyn
Chief, Bureau of Records

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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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 12, 1995.

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.