

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Colorado River Communications Corp. for apparent violation of Rule 25-24.485, F.A.C., Tariffs, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 981868-TI  
ORDER NO. PSC-99-0401-SC-TI  
ISSUED: February 24, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE

BY THE COMMISSION:

I. BACKGROUND

Colorado River Communications Corp. (Colorado), is a provider of interexchange telecommunications service, certificate number 3565. Colorado received its interexchange telecommunications certificate on July 8, 1994.

This Commission received a complaint against Colorado regarding apparent unauthorized usage charges and a monthly service fee billed to the customer's account. On October 14, 1998, our staff sent a certified letter to Colorado informing it of the failure to respond regarding the apparent unauthorized charges. This letter was signed for on October 20, 1998, but to date, no response has been received. In addition, the monthly service charge appearing on the customer's telephone bill is not a charge included in Colorado's tariff on file with this Commission.

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II. APPARENT VIOLATIONS

Rule 25-24.485, Florida Administrative Code, Tariffs states, in pertinent part:

(1)(a) Each company shall maintain on file with the Commission tariffs which set forth all of the rates and charges for customer services, the different services available to subscribers and the conditions and circumstances under which services will be furnished.

(I) Companies shall charge only the rates contained in their tariff.

Based on the customer's bill submitted to our staff, it appears that Colorado is assessing a \$3.00 monthly service fee that is not contained in its tariff. This charge appears under the long distance charges portion of the bill. Therefore, it appears to be in violation of Rule 25-24.485, Florida Administrative Code.

In addition, Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, 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.

Our staff sent a certified letter to Colorado on October 14, 1998, with a response date of October 24, 1998. The letter was signed for and received on October 20, 1998. To date, no response has been received.

III. CONCLUSION

Pursuant to 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. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is 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). Accordingly, we hereby order Colorado to show cause in writing within twenty-one (21) days of the effective date of this Order why it should not be fined \$250 for apparent violation of Rule 25-24.485, Florida Administrative Code, and \$10,000 for failure to comply with Rule 25-4.043, Florida Administrative Code, or why certificate number 3565 should not be canceled if the fines are not submitted within five business days after the Order becomes final.

Colorado shall have 21 days from the issuance of this Order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If Colorado timely responds to the show cause order, this docket shall remain open pending resolution of the show cause proceeding. If Colorado does not respond to the Commission's Order to Show Cause, the fines shall be assessed. If Colorado fails to respond to the Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, Colorado's certificate shall be canceled and this docket closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Colorado River Communications Corp. shall show cause in writing within 21 days of the effective date of the order why it should not be fined \$250 for apparent violation of Rule 25-24.485, Florida Administrative Code, and \$10,000 for failure to comply with Rule 25-4.043, Florida Administrative Code, or have its certificate canceled if the fines are not submitted within five business days after the Order becomes final. It is further

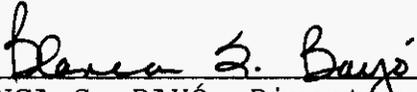
ORDERED that any response to the Order to Show Cause filed by Colorado River Communications Corp. shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, waiver of right to a hearing, and will result in the automatic assessment of the appropriate fine and cancellation of certificate. It is further

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ORDERED that in the event Colorado River Communications Corp. fails to respond to this Order and the fines are not received within five business days after the expiration of the show cause response period, Colorado River Communications Corp.'s certificate shall be canceled and this docket closed administratively.

By ORDER of the Florida Public Service Commission this 24th day of February, 1999.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

JAM

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 this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response 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 March 17, 1999.

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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 and a default pursuant to Rule 28-106.111(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.