

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against J and L Communications for violation of Rules 25-4.043, F.A.C., Response to Commission Staff Inquiries, and 25-24.515(9)(a), (12), and (18), F.A.C., Pay Telephone Service.

DOCKET NO. 991471-TC
ORDER NO. PSC-99-2343-SC-TC
ISSUED: December 3, 1999

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE

BY THE COMMISSION:

J and L Communications (J and L, or the company) holds Certificate of Public Convenience and Necessity No. 3353, issued by this Commission on June 11, 1993, authorizing the provision of pay telephone services. On March 15, 1999 J and L reported no revenues on its 1998 regulatory assessment fee return.

On April 15, 1999, our staff conducted a service evaluation of a pay telephone with number (904) 241-9985, located at 317 9th Avenue in Jacksonville. The results of the evaluation, and additional follow-up investigation indicate that J and L is violating the following rules: 1) failure to identify the proper name of the certificate holder on its pay phone (Rule 25-24.515(9)(a), Florida Administrative Code); 2) failure to route 0-calls to a local exchange company or alternative local exchange company (Rule 25-24.515(12), Florida Administrative Code); 3) failure to comply with standards for wheelchair accessibility (Rule 25-24.515(18), Florida Administrative Code); and, 4) failure to respond to staff inquiries regarding service violations (Rule 25-4.043, Florida Administrative Code).

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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The name of the company responsible for the pay phone, as posted on the pay phone, was Alacrity Communications, Inc. However, a pay telephone certificate has not been issued in the name of Alacrity Communications, Inc. Further investigation showed that J and L had been issued a certificate to operate the phone. The records at the Department of State (DOS) show that the fictitious name "J and L Communications" expired December 31, 1998, and that "Alacrity Communications, Inc." is not registered as a corporation or fictitious name. Staff wrote J and L on July 23, 1999, and explained that since its fictitious name had expired with DOS, the company needed to either have the fictitious name reinstated or cancel the J and L certificate and apply for a new certificate in the name of Alacrity Communications, Inc., after it had registered the new name with DOS. Although staff requested a response by August 9, the company had not responded as of November 16, 1999.

In addition, the service evaluation showed that the pay phone routed 0- calls to an interexchange company, not a local exchange company or alternative local exchange company as required by rule. Finally, the pay phone did not comply with standards for wheelchair accessibility in that it was nine inches too high for side access.

Through written correspondence mailed on May 5, 1999, our staff informed the company of the 0- and accessibility problems. Staff requested a response by May 20, 1999. The company did not respond by the due date and on May 24, 1999, our staff mailed the company a certified letter requesting a response by June 8, 1999. No response was received to this second request. On June 24, 1999 our staff called the telephone number listed in the Master Commission Directory for the company and left a message for a return call. No return call was received. Staff left another phone message on July 6, 1999. Ms. Sherry Carter returned staff's second call on July 6 and advised that she would respond to the service evaluation. As of November 16, 1999, a response had not been received.

By Section 364.285, Florida Statutes, we are 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

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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).

We find that J and L's conduct in providing pay telephone services is in apparent violation of Commission Rules 25-24.515 and 25-4.043, Florida Administrative Code, and 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 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 J and L's conduct at issue here, would meet the standard for a "willful violation."

Accordingly, it appears that J and L is in violation of our service standards established for pay telephone companies. Therefore, we hereby order J and L to show cause in writing within 21 days of the issuance of this Order why it should not be fined \$3,000 or have its certificate canceled for apparent violation of Rules 25-24.515(9)(a), (12), and (18), Florida Administrative Code, and why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code. The company's response shall contain specific allegations of fact or law. If J and L fails to respond to the show cause order, and the \$3,000 fine is not paid within 10 business days after the 21 day show cause period, Certificate No. 3353 shall be canceled. If the fine is paid, it shall be remitted to the Commission to be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund, pursuant to Section 364.285, Florida Statutes.

It is, therefore

ORDERED by the Florida Public Service Commission that J and L Communications shall show cause in writing within 21 days of the issuance date of this Order why it should not be fined \$3,000 or have Certificate No. 3353 canceled for apparent violation of Rules 25-24.515(9)(a), (12), and (18), Florida Administrative Code. It is further

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ORDERED that J and L Communications shall show cause in writing within 21 days of the issuance date of this Order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code. It is further

ORDERED that any response to the Order to Show Cause filed by J and L Communications shall contain specific allegations of fact and law and shall identify the company name and this docket number. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and date set forth in the "Notice of Further Proceedings and Judicial Review" section of this Order shall constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and will result in the automatic assessment of the \$3,000 and \$10,000 fines. It is further

ORDERED that in the event J and L Communications fails to respond to this Order and the \$3,000 fine is not paid within 10 business days following the conclusion of the show cause period, Certificate No. 3353 shall be canceled. It is further

ORDERED that in the event J and L Communications fails to respond to this Order and the \$10,000 fine is not paid within 10 business days following the conclusion of the show cause period, the fine will be forwarded to the Comptroller's Office for further collection efforts. It is further

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

ORDERED that upon payment of the fines or cancellation of the certificate, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 3rd
day of December, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

MKS

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 December 24, 1999.

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.

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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.