

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 010206-TI
ORDER NO. PSC-01-1148-SC-TI
ISSUED: May 21, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER TO SHOW CAUSE

BY THE COMMISSION:

I. BACKGROUND

On August 30, 1999, Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. (Telquest) obtained Florida Public Service Commission interexchange (IXC) certificate no. 7111. On January 25, 2000, Telquest reported \$151.53 in intrastate revenue for 1999. We attempted to investigate five consumer complaints against Telquest during the period of March 20, 2000 through October 26, 2000. On December 5, 2000, our staff mailed the 2000 Regulatory Assessment Fee (RAF) form to Telquest. Staff opened this docket to initiate show cause proceedings against Telquest for apparent violation of Rules 25-4.043 and 25-4.0161, Florida Administrative Code on February 12, 2001. On February 21, 2001, our staff mailed a delinquent notice to Telquest regarding the RAF. As of April 10, 2001, Telquest has neither responded to the complaints nor submitted its RAF.

DOCUMENT NUMBER-DATE

06343 MAY 21 01

FPSC-RECORDS/REPORTING

II. ALLEGED VIOLATIONS

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.

When our staff received no response to the first three complaints sent to the company via facsimile, it started sending the complaints to the company via the United States Postal Service (USPS) as well as facsimile. The last two complaints mailed to the company were returned by the USPS with a message that indicated the company moved and left no forwarding address.

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 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 believe that the conduct of Telquest, 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, this 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 Telquest at issue here, would meet the standard for a "willful violation."

The 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.

Further, 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 Telquest 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 25-24.474, Florida Administrative Code. We believe that the failure of Telquest to pay its RAF constitutes a willful violation of a lawful rule of the Commission under the same legal analysis as set forth above.

III. CONCLUSION

Accordingly, Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$10,000 per violation, for a total of \$50,000, or have certificate number 7111 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and 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 shall contain specific allegations of fact and law. If Telquest fails to respond to the show cause order or

ORDER NO. PSC-01-1148-SC-TI
DOCKET NO. 010206-TI
PAGE 4

request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing should be deemed waived, and the fine shall be deemed assessed. If the fine and fees are not paid within ten business days after the Order becomes final, they shall be forwarded to the Office of the Comptroller for collection. If the fine and fees are paid, the fine shall be remitted to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. We are vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285 and 364.336, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. shall show cause in writing within 21 days of the date of this Order why it should not be fined \$10,000 per violation, for a total of \$50,000, or have certificate number 7111 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries and why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. It is further

ORDERED that any response to the Order to Show Cause filed by Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. 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 thereto, shall constitute an admission of the violations described in the body of this Order, as well as a waiver of the right to a hearing, and will result in the automatic assessment of the fines. It is further

ORDERED that in the event Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. fails to respond to this Order and the fines are not received within ten business days after the expiration to show cause response period, Certificate Number

ORDER NO. PSC-01-1148-SC-TI
DOCKET NO. 010206-TI
PAGE 5

7111 shall be canceled, and this docket shall be closed administratively. It is further

ORDERED that if Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding.

By ORDER of the Florida Public Service Commission this 21st day of May, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

FRB

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.

ORDER NO. PSC-01-1148-SC-TI
DOCKET NO. 010206-TI
PAGE 6

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 June 11, 2001.

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.