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April 8, 1996

Blanca S. Bayo
Director, Division of Records and Recording
2540 Schumart Oak Blvd.
Tallahassee, Florida 32399-0850

VIA FEDERAL EXPRESS

RE: Docket Number 960124-TC

Dear Ms. Bayo:

We are forwarding to you herewith:

1. The original and seven copies of Wlberth Gaviria's Answer and Response to Order to Show Cause;
2. The original and seven copies of Wlberth Gaviria's Petition to Initiate Formal Proceeding.

Furthermore, this letter will serve as undersigned counsel's requests that all further correspondence, pleadings, documents and other matters in connection with the above referenced docket number be forwarded to:

Wlberth Gaviria
C/O Catlin, Saxon, Tuttle and Evans, P.A.
Attention: Brian L. Fink
169 E. Flagler Street, Suite 1700
Miami, Florida 33131-1298

- ACK
- AFA _____
- APP _____
- CAF _____
- CML _____
- CTR _____
- EAG _____
- LEG 1 _____
- LIN 5 _____
- OPC _____
- RCH _____
- SEC 1 _____
- WAS _____
- OTH _____

Thank you in advance for your courtesy.

Sincerely,

Brian L. Fink
Brian L. Fink

cc: Wlbert Gaviria

Answer & Resp.
DOCUMENT NUMBER-DATE
04105 APR-96
FPSC-RECORDS/REPORTING

Petition
DOCUMENT NUMBER-DATE
04106 APR-96
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of Show Cause)
Proceedings Against Wlberth)
Gaviria for Violation of Service)
Standards Rules 25-24.515 and)
25-24.512, F.A.C.)

Docket No.: 960124 TC

**WLBERTH GAVIRIA'S ANSWER AND
RESPONSE TO ORDER TO SHOW CAUSE**

Wlberth Gaviria ("Gaviria") files this his Answer and Response to Order to Show Cause and the Public Service Commission's finding contained in: II Service Standards Violations of the Public Service Commission's Order to Show Cause. As more fully spelled out below, Gaviria disputes certain findings of the Public Service Commission (PSC).

As set forth in the Order to Show Cause, the Commission's investigation of Wlberth Gaviria was instituted by the Commission at the insistence of one of Mr. Gaviria's competitors, Liberty Tel, Inc. Mr. Gaviria and Liberty Tel, Inc. are engaged in contentious litigation in connection with providing public telephone services in certain areas of Dade County, Florida. We are unable to respond to the specific allegations Liberty Tel, Inc. made against Wlberth Gaviria because Wlberth Gaviria has never been provided with a copy of any complaint from either Liberty Tel, Inc. or the Public Service Commission staff.

Wlberth Gaviria denies that he has violated 25-24.515 regarding service standards for pay-telephone service. In connection with each service evaluation provided by the Public Service Commission to Wlberth Gaviria, Mr. Gaviria corrected those defects which it could discover and replicate and advised the Public Service Commission regarding those defects with which it could not replicate. A disproportionate number of the defects assigned to Wlberth Gaviria by the Public Service Commission investigator could not be replicated. A number of the other defects were caused by vandalism. (It is Wlberth Gaviria's belief that the vandalism was caused by Liberty Tel, Inc. in connection with the competitive dispute in question.) As detailed below, Wlberth Gaviria provided the Public Service Commission with the following responses in connection with various telephone which the Public Service Commission identified as defective.

As to the telephone located at 6900 Biscayne Blvd., Miami, Florida (305-751-8327), Gaviria ordered the current directory.

As to the telephone located at 7400 Biscayne Blvd., Miami, Florida (305-751-8523), Gaviria ordered the current directory.

As to the telephone located at 6900 Biscayne Blvd., Miami, Florida (305-751-8906), Gaviria ordered the current directory.

As to the telephone located at 6101 Biscayne Blvd., Miami, Florida (305-751-9778), Gaviria ordered the current directory.

As to the telephone located at 6101 Biscayne Blvd., Miami, Florida (305-751-9906), Gaviria ordered the current directory.

As to the telephone located at 1967 71 Street, Miami Beach, Florida (305-861-9041), Gaviria ordered the current directory.

As to the telephone located at 71 Street, Miami Beach, Florida (305-867-9725), the subject telephone was vandalized, and Gaviria installed a new telephone number plate, ordered a current directory, installed a new pay phone address, and replaced Wlberth with Wlberth Gaviria

DOCUMENT NUMBER-DATE

04105 APR-98

FPSC-RECORDS/REPORTING

As to the telephone located at 1219 71 Street, Miami Beach, Florida (305-868-9167), the subject telephone was vandalized, and Gaviria installed a new telephone number plate, ordered a current directory, installed a new pay phone address, and replaced WLBERTH with WLBERTH GAVIRIA.

As to the telephone located at 225 71 Street, Miami Beach, Florida (305-868-9357), Gaviria ordered a current directory.

As to the telephone located at 247 71 Street, Miami Beach, Florida (305-868-9727) Gaviria ordered a current directory.

As to the telephone located at 209 71 Street, Miami Beach, Florida (305-868-9823), Gaviria ordered a current directory.

As to the telephone located at 216 NW 11th Ave., Miami, Florida (305-350-9020), Gaviria ordered a current directory.

As to the telephone located at 1201 NW 3rd Ave., Miami, Florida (305-350-9096) Gaviria ordered a current directory.

As to the telephone located at 222 Lincoln Road, Miami Beach, Florida (305-531-9036), Gaviria ordered a current directory.

As to the telephone located at 2333 Biscayne Blvd., Miami, Florida (305-573-9876), Gaviria ordered a current directory.

As to the telephones located at 1300 NW 79 Street, Miami, Florida (305-691-9068, 305-694-9415), Gaviria ordered a current directory

As to the telephone located at 8290 N. Miami Ave., Miami, Florida (305-751-9433), Gaviria ordered a current directory.

As to the telephone located at 8290 N. Miami Ave., Miami, Florida (305-751-9433), Gaviria ordered a current directory.

As to the telephone located at 8290 N. Miami Ave., Miami, Florida (305-751-9732), Gaviria ordered a current directory.

As to the telephone located at 4401 NW 2nd Ave, Miami, Florida (305-573-9320), Gaviria ordered a current directory, installed "Wlberth Gaviria", and as the provider, installed new information cards.

As to the telephone located at 210 11th St. Miami Beach, Florida (305-673-9125), Gaviria ordered a current directory.

As to the telephone located at 210 11 St. Miami Beach, Florida (305-673-9337), Gaviria ordered a current directory.

As to the telephone located at 90 NE 54 St., Miami, Florida (305-751-8248), Gaviria ordered a current directory.

As to the telephone located at 375 NE 54 St. Miami, Florida (305-751-8378), Gaviria ordered a current directory.

As to the telephone located at 5740 NW 2nd Ave. Miami, Florida (305-751-8984), Gaviria ordered a current directory.

As to the telephone located at 5650 NW 2nd Ave., Miami, Florida (305-751-9087), Gaviria ordered a current directory.

As to the telephone located at 5390 NW 12th Ave. Miami, Florida (305-751-9763), Gaviria ordered a current directory.

As to the telephone located at 1220 NW 54 St. Miami, Florida (305-751-9848), Gaviria ordered a current directory.

As to the telephone located at 4810 NW 2nd Ave. Miami, Florida (305-751-9860), Gaviria ordered a current directory.

As to the telephone located at 4810 NW 2nd Ave. Miami, Florida (305-751-9992), Gaviria ordered a current directory.

Notwithstanding the foregoing, the Public Service Commission reported to Gaviria numerous other violation, but when Gaviria inspected the subject telephones he discovered that he could not replicate the violation more specifically:

As to the telephone located at 6900 Biscayne Blvd., Miami, Florida (305-751-8327), the address of responsible party for refunds/repairs was displayed.

As to the telephone located at 7400 Biscayne Blvd., Miami, Florida (305-751-8523), the address of responsible party for refunds/repairs was displayed, and there was sufficient light to read instructions at night.

As to the telephone located at 6900 Biscayne Blvd., Miami, Florida (305-751-8906), the address of responsible party for refunds/repairs was displayed.

As to the telephone located at 6101 Biscayne Blvd., Miami, Florida (305-751-9778), the telephone was accessible to the physically handicapped, and the address of responsible party for refunds/repairs was displayed.

As to the telephone located at 6101 Biscayne Blvd., Miami, Florida (305-751-9906), the telephone was accessible to the physically handicapped, and the address of responsible party for refunds/repairs was displayed.

As to the telephone located at 1967 71 Street, Miami Beach, Florida (305-861-9041), the address of responsible party for refunds/repairs was displayed, and combinations of nickels and dimes operated correctly..

As to the telephone located at 71 Street, Miami Beach, Florida (305-867-9725), the address of responsible party for refunds/repairs was displayed, there was sufficient light to read instructions at night, incoming calls could be received, and the bell rang sufficiently loud.

As to the telephone located at 1219 71 Street, Miami Beach, Florida (305-868-9167), the address of responsible party for refunds/repairs was displayed, there was sufficient light to read instructions at night, the local telephone company responsibility disclaimer was displayed, and the bell rang sufficiently loud.

As to the telephone located at 225 71 Street, Miami Beach, Florida (305-868-9357), the address of responsible party for refunds/repairs was displayed, the address of pay phone location was displayed, the local telephone company responsibility disclaimer was displayed, and the bell rang sufficiently loud, and the 911 center could verify the street address or the pay phone.

As to the telephone located at 247 71 Street, Miami Beach, Florida (305-868-9727) the address of responsible party for refunds/repairs was displayed, the address of pay phone location was displayed, there was sufficient light to read instructions at night, the bell rang sufficiently loud, and the 911 center could verify the street address or the pay phone.

As to the telephone located at 209 71 Street, Miami Beach, Florida (305-868-9823), the address of responsible party for refunds/repairs was displayed, there was sufficient light to read instructions at night, the bell rang sufficiently loud, and the 911 center could verify the street address or the pay phone.

As to the telephone located at 216 NW 11th Ave., Miami, Florida (305-350-9020), the address of responsible party for refunds/repairs was displayed, the wiring was properly terminated and in good condition, the address of pay phone location was displayed and the 911 center could verify the street address of the pay phone..

As to the telephone located at 1201 NW 3rd Ave., Miami, Florida (305-350-9096) the address of responsible party for refunds/repairs was displayed.

As to the telephone located at 222 Lincoln Road, Miami Beach, Florida (305-531-9036), the address of responsible party for refunds/repairs was displayed, the address of pay phone location was displayed, there was sufficient light to read instructions at night, and the 911 center could verify the street address or the pay phone.

As to the telephone located at 2333 Biscayne Blvd., Miami, Florida (305-573-9876), the address of responsible party for refunds/repairs was displayed

As to the telephones located at 1300 NW 79 Street, Miami, Florida (305-691-9068, 305-694-9415), the address of responsible party for refunds/repairs was displayed.

As to the telephone located at 8290 N. Miami Ave., Miami, Florida (305-751-9433), the address of responsible party for refunds/repairs was displayed and the address of pay location was displayed. Gaviria ordered a current directory.

As to the telephone located at 8290 N. Miami Ave., Miami, Florida (305-751-9433), the telephone was in service, the address of responsible party for refunds/repairs was displayed, the address of pay phone location was displayed, and the direct coin free service to the local operator did work.

As to the telephone located at 8290 N. Miami Ave., Miami, Florida (305-751-9732), the address of responsible party for refunds/repairs was displayed and the address of pay phone location was displayed.

As to the telephone located at 4401 NW 2nd Ave, Miami, Florida (305-573-9320), the telephone was accessible to the physically handicapped, there was sufficient light to read instructions at night, and incoming calls could be received/and the bell rang sufficiently loud.

As to the telephone located at 210 11th St. Miami Beach, Florida (305-673-9125), Gaviria ordered a current directory.

As to the telephone located at 210 11 St. Miami Beach, Florida (305-673-9337), the address of responsible party for refunds/repairs was displayed.

As to the telephone located at 90 NE 54 St., Miami, Florida (305-751-8248), the address of responsible party for refunds/repairs was displayed.

As to the telephone located at 375 NE 54 St. Miami, Florida (305-751-8378), the address of responsible party for refunds/repairs was displayed.

As to the telephone located at 5740 NW 2nd Ave. Miami, Florida (305-751-8984), the address of responsible party for refunds/repairs was displayed.

As to the telephone located at 5650 NW 2nd Ave., Miami, Florida (305-751-9087), the address of responsible party for refunds/repairs was displayed, there was sufficient light to read instructions at night.

As to the telephone located at 5390 NW 12th Ave. Miami, Florida (305-751-9763), the address of responsible party for refunds/repairs was displayed, the telephone was accessible to the physically handicapped, and the name "Wlberth Gaviria" was displayed as the provider.

As to the telephone located at 1220 NW 54 St. Miami, Florida (305-751-9848), the address of responsible party for refunds/repairs was displayed and incoming calls could be received, and the bell rang sufficiently loud.

As to the telephone located at 4810 NW 2nd Ave. Miami, Florida (305-751-9860), the address of responsible party for refunds/repairs was displayed and incoming calls could be received, the bell rang sufficiently loud, and 911 center could verify the street address or the pay phone.

As to the telephone located at 4810 NW 2nd Ave. Miami, Florida (305-751-9992), the address of responsible party for refunds/repairs was displayed and incoming calls could be received, and the bell rang sufficiently loud.

It is Wlberth Gaviria's position that the Public Service Commission and/or one or more of its inspectors or evaluators has improperly used its power and authority to falsely provide misleading service evaluations regarding Wlberth Gaviria's telephones. As further evidence of this we would point out that Wlberth Gaviria received certain service evaluations for telephones which he did not own or service and which were not registered to him in. In particular, the Public Service Commission reported violations at the pay telephones located at 2050 Stirling Road, Hollywood, Florida, (305-920-9902); 4715 E. 10 Ct. Hialeah, Florida (305-685-9342); 3994 99th Ave. Miami, Florida (305-221-9671); 420 W. 29 St., (305-883-8281); 6622 W. Flagler St., Miami, Florida (305-261-9899); and 411 Hialeah, Hialeah, Florida (305-883-9851).

In October of 1995, when the misleading service evaluations did not remedy themselves, Wlberth Gaviria, through counsel contacted the Public Service Commission regarding this problem. At that time Wlberth Gaviria requested copies of the inspector's actual field notes so that a more precise determinations of the alleged service deficiencies could be pursued. The Public Service Commission declined to provide that information. No further negative service evaluations have been received since September of 1995.

At all times material, Gaviria had an effective installation and maintenance procedure, and Gaviria never misrepresented his repairs efforts. In addition, Mr. Gaviria has read, understands and complies with the Commission's rules concerning pay telephone services.

In summary, it is Wlberth Gaviria's position that the staff's recommendation regarding Rule 25-24.515 is based on erroneous information. Staff has alleged some 336 violations as the basis for the order to show cause. Upon inspection by Wlberth Gaviria the majority of these violations could not be found or replicated. All those found were timely rectified. Accordingly, no penalty should be imposed for violation of 25-24.515.

Wlberth Gaviria denies that he has violated Rule 25-24.512 regarding improper use of the Certificate. At no time and under no circumstances has Wlberth Gaviria sold, assigned or transferred certificate number 3320. This issue was originally raised in May of 1995 by Mr. Gary Collins, Regulatory Analyst Bureau of Service Evaluation. In response, this office responded on behalf of both Wlberth Gaviria and South Telecommunications, Inc. in a letter dated May 30, 1995. Mr. Gaviria's response as set forth in the letter at that time was as follows:

When the telephones at issue were placed in the field for public use, they bore signs containing the information required in the Florida Statute 364.375(2)(c)(d) as well as PSC Rule 25-24.515(5). The signs identified Wlberth Gaviria as a certificate holder and as the party responsible for repairs and refunds.

"It is [Wlberth Gaviria's] belief that the signs on the telephone were vandalized by removing the identification of the certificate holder (i.e. Wlberth Gaviria) and leaving the only identified party as South Telecommunications, Inc. The market in which [Wlberth Gaviria] places its telephones is highly competitive and there have been a number of incidents of vandalism and other unfair competition. In fact there is currently litigation pending between my client and another pay-telephone service provider in Dade County Circuit Court.

Upon receipt of your May 16, 1995 letter, [Wlberth Gaviria] has taken the necessary steps to alleviate any confusion. The name of South Telecommunications, Inc. has been physically removed from the phones where services are provided by Wlberth Gaviria and the name Wlberth Gaviria has been returned to the signage as the certificate holder."

No further communication from the Public Service Commission has been received by Wlberth Gaviria regarding this issue. It comes as a surprise that this is a still an open issue between Wlberth Gaviria and Public Service Commission. No violation of 25-24.515 has occurred and no penalty should be imposed.

Based on the foregoing, Gaviria has clearly shown cause why he should not be fined or have his certificate canceled.

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By:


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