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State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850



-M-E-M-O-R-A-N-D-U-M-

DATE: 2/4/99

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (COX) *WPC NRB*
DIVISION OF COMMUNICATIONS (MCCOY) *gm JW*

RE: DOCKET NO. 990109-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST PEOPLES TELEPHONE COMPANY, INC. FOR VIOLATION OF RULES 25-24.515, F.A.C., PAY TELEPHONE SERVICE, AND 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 2/16/99 - REGULAR AGENDA - ISSUE 1 SHOW CAUSE-ISSUE 2 PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\990109.RCM

CASE BACKGROUND

- Peoples Telephone Company, Inc. (Peoples) is a provider of pay telephone service, Certificate No. 84, and was certified March 14, 1985. It owns and operates approximately 8825 pay telephones in Florida. Peoples reported gross operating revenues of \$19,910,015 and gross intrastate revenues of \$17,699,106 on its Regulatory Assessment Fee Returns for the period January 1, 1997, through December 31, 1997. As a provider of pay telephone service in Florida, Peoples is subject to the rules and regulations of the Commission.

- Five show cause dockets have been opened against Peoples, but only three of the five resulted in a fine and/or settlement. In addition, Peoples had three investigation dockets opened, and one of those dockets carried a \$100,000 fine and required a refund of

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\$963,651. Staff opened a cancellation docket on its interexchange certificate for not paying its regulatory assessment fees timely which resulted in a \$500 fine.

- On July, 21, 1987, by Order No. 17882, in Docket No. 870361-TC, in a pay telephone issue, the Commission clarified Order No. 14454, issued June 10, 1985. No fine was imposed and the docket was closed.
- On May 25, 1990, by Order No. 22981, in Docket No. 891291-TC, in a pay telephone issue, the Commission ordered Peoples to show cause why it should not be fined \$43,000, have a moratorium placed on leasing additional PATS access lines for a period of ninety (90) days and have the Commission put the company on notice that future violations of Commission policies shall be cause for additional penalties and/or loss of its certificate. The show cause action against Peoples was initiated for violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service standards. The docket was closed when Peoples paid a settlement amount of \$7,500.
- On May 28, 1991, by Order 24590, in Docket No. 910380-TC, in a pay telephone issue, the Commission ordered Peoples to show cause why it should not be fined \$15,000 for violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service standards. The docket was closed when Peoples paid a settlement amount of \$10,000.
- On November 21, 1991, by Order 25372, in Docket No. 911010-TC, in a pay telephone issue, staff recommended a show cause action against Peoples for violation of Rule 25-24.515(6) - Pay Telephone Service standards - Access to all long distance carriers. The Commission denied staff's show cause recommendation to impose a \$20,000 fine or cancel Peoples certificate.
- On February 15, 1995, The Office of Public Counsel filed a Petition of Citizens of the State of Florida for investigation and/or petition for show cause against Peoples for blocking access to certain interexchange carriers as required per Rule 25-24.515(6), Florida Administrative Code, Pay Telephone Service standards. The Office of Public Counsel withdrew its petition and the docket was closed once Peoples responded to the questions regarding the complaint.
- On April 26, 1995, by Order PSC-95-0523-FOF-TI, in Docket No. 910666-TI, in an investigation into Peoples overcharging end users and LECs for local, intraLATA, and interLaTATA calls of pay telephone users. The Commission ordered Peoples to refund a total of \$963,651 to be distributed between the end users, LECs, and the FDOC-Inmate

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Welfare Fund and pay a fine of \$100,000 in settlement of the investigation. Upon completion of the refund process and fine payment of \$100,000, the docket was closed.

● On June 13, 1996, by Order PSC-96-0765-AS-TC, in Docket No. 960358-TC, the Commission ordered Peoples to show cause why it should not be fined for apparent violations of Rule 25-24.515 (8), Florida Administrative Code, Pay Telephone Service standards, and for violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The docket was closed when Peoples paid the settlement fine of \$5,000.

● On September 9, 1997, by Order PSC-97-1054-FOF-TI, in Docket No. 970929-TI, in an interexchange issue, the Commission imposed a fine of \$500 on Peoples for not paying regulatory assessment fees on its interexchange certificate for the year 1996. The docket was closed when Peoples paid the \$500 fine and regulatory assessment fees, along with statutory penalties and interest charges.

● From January 1, 1997, through December 31, 1998, staff performed 1327 evaluations on pay telephones operated by Peoples. Staff found a total of 2423 apparent violations of the Commission's service standards.

DISCUSSION OF ISSUES

ISSUE 1.: Should Peoples Telephone Company, Inc. be ordered to show cause why it should not be fined \$136,150 or Certificate No. 84 should not be canceled for apparent violations of Rule 25-24.515, Florida Administrative Code?

RECOMMENDATION: Yes. Due to the number of apparent violations found during routine service evaluations, staff recommends that the Commission order Peoples to show cause why it should not be fined \$136,150 or have its certificate canceled for numerous apparent violations of the Commission's pay telephone service standards in Rule 25-24.515, Florida Administrative Code. (MCCOY)

STAFF ANALYSIS: In routine evaluations conducted from January 1997 through December 1998, staff found 25 pay stations in which direct, coin free access to the universal telephone number "911" or service to local operator did not work. This is an apparent violation of Rule 25-24.515(3), Florida Administrative Code. (Attachment A, Page 11)

Staff found 525 pay stations where the required telephone numbers, pay station services, dialing instructions, certificated provider's name, and necessary addresses were either illegible, incorrect or not posted at all. This is an apparent violation of Rule 25-24.515(5), Florida Administrative Code. (Attachment A, Page 11)

Staff found 47 pay stations that did not allow access to all locally available interexchange carriers, an apparent violation of Rule 25-24.515(6), Florida Administrative Code. (Attachment A, Page 11)

Staff found 67 pay stations where an intralata call did not route to the local exchange company. This is an apparent violation of Rule 25-24.515(7), Florida Administrative Code. (Attachment A, Page 11)

Staff found 194 pay stations in which the pay station ringers were turned down so low or were completely inoperable, effectively blocking incoming calls at the pay stations. Of the pay stations evaluated by staff, 2 pay stations were actually posted "No Incoming Calls", yet according to Commission records no waiver had been granted. Peoples was show caused and fined \$5,000 for actively blocking incoming calls in June 1996. It appears that Peoples may be continuing this practice by disabling the pay station ringers which effectively blocks incoming calls, an apparent violation of

Rule 25-24.515(8), Florida Administrative Code. (Attachment A, Page 11)

Staff found 592 pay stations that did not have a directory or the directory was not current. Of those pay stations evaluated 97 did not have brackets in place to even accommodate a directory. This is an apparent violation of Rule 25-24.515(11), Florida Administrative Code. (Attachment A, Page 12)

Staff found 43 pay stations that did not meet the ANSI standards which went into effect in January, 1987. Peoples was show caused and fined \$10,000, in May 1991, for not complying with the pay telephone service standards, which included verifying that all of its pay stations were in compliance with the ANSI standards. It appears that Peoples continues to have a problem meeting ANSI standards, an apparent violation of Rule 25-24.515(13), Florida Administrative Code. (Attachment A, Page 12)

The following chart shows the total number of violations found during routine pay station evaluations from January 1, 1997, through December 31, 1998 for each rule.

Item No.	Number of Violations	Violation
1	163	Telephone was not in service Rule 25-24.515 (10), Florida Administrative Code
2	43	Telephone was not wheelchair accessible Rule 25-24.515 (13), Florida Administrative Code
3	68	Telephone number plate was not displayed Rule 25-24.515 (5), Florida Administrative Code
4	8	Address of responsible party for refunds/repairs was not displayed Rule 25-24.515 (5), Florida Administrative Code
5	26	Coin free number for repairs/refunds did not work properly Rule 25-24.515 (5), Florida Administrative Code

Item No.	Number of Violations	Violation
6	592	Current directory in good condition was not available Rule 25-24.515 (11), Florida Administrative Code
7	39	Extended Area Service and Local Calls did not work properly (PATS evaluation criteria for item 7 in 1997) Rule 25-24.620(2)(e), Florida Administrative Code
8	97	Bracket to hold a current directory was not available (PATS evaluation criteria changed for item 7 in 1998) Rule 25-24.515 (11), Florida Administrative Code
9	14	Wiring was not properly terminated or was in poor condition Rule 25-24.515 (10), Florida Administrative Code
10	403	Address of pay phone location was not displayed Rule 25-24.515 (5), Florida Administrative Code
11	167	Enclosure was not adequately clean or free of trash Rule 25-24.515 (12), Florida Administrative Code
12	74	Enclosure was not adequate or free of trash Rule 25-24.515 (12), Florida Administrative Code
13	21	Glass was chipped or broken Rule 25-24.515 (12), Florida Administrative Code
14	57	Insufficient light to read instructions at night Rule 25-24.515 (1), Florida Administrative Code

Item No.	Number of Violations	Violation
15	3	Certificated name of provider was not displayed Rule 25-24.515 (5), Florida Administrative Code
16	63	Name of IXC was not correctly displayed Rule 25-24.515 (6), Florida Administrative Code
17	15	Clear and accurate dialing instructions were not displayed Rule 25-24.515 (5), Florida Administrative Code
18	2	Statement of services not available was not displayed Rule 25-24.515 (5), Florida Administrative Code
19	52	Automatic coin return function did not operate properly Rule 25-24.515 (2), Florida Administrative Code
20	194	Incoming calls could not be received or bell did not ring loud enough Rule 25-24.515 (8), Florida Administrative Code
21	6	Direct coin service to local Directory Assistance did not work Rule 25-24.515(4), Florida Administrative Code
22	47	Access to all locally available interexchange carriers was not available Rule 25-24.515 (6), Florida Administrative Code
23	25	Direct, coin free access to the universal telephone number "911" or service to local operator did not work Rule 25-24.515(3), Florida Administrative Code

Item No.	Number of Violations	Violation
24	94	911 center could not verify the street address of the pay phone Rule 25-24.515 (5), Florida Administrative Code
25	38	Transmission was not adequate or free of noise Rule 25-24.515 (10), Florida Administrative Code
26	4	PATS screening was not in place Rule 25-24.515 (9), Florida Administrative Code
27	51	Combination of nickels and dimes did not operate properly Rule 25-24.515 (2), Florida Administrative Code
28	23	Dial pad did not function after call was answered Rule 25-24.515 (14), Florida Administrative Code
29	67	Code 0 + area code + local number did not go to LEC operator Rule 25-24.515 (7), Florida Administrative Code

In prior dockets involving violations of Commission rules, Peoples' fines and settlements have ranged from \$500 to \$100,000. In previous dockets involving other pay telephone companies, violations of the pay telephone service rules, fines and settlements have ranged from \$100 to \$60,400. Factors that have affected previous fines and settlement amounts are: the number of occurrences of apparent violations; the severity of the violations; and whether the provider promptly corrected violations when notified. In this case, staff believes the number of occurrences, the seriousness of the violations, the company's apparent continued non-compliance with Commission Rules and previous Orders, warrants a substantial penalty. Therefore, staff recommends Peoples be ordered to show cause why it should not be fined \$136,150 or have its certificate canceled.

ISSUE 2.: Should the Commission impose a \$500 fine or cancel Peoples Pay Telephone Certificate No. 84 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel Peoples' Certificate No. 84 if the fine and the regulatory assessment fees, including statutory penalties and interest are not received by the Commission within 5 business days after the conclusion of the 21 day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285 (1), Florida Statutes. If the Commission's Order is not protested and the fine and the regulatory assessment fees, including statutory penalties and interest are not received, certificate number 84 should be canceled. (MCCOY)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees no later than July 30 for the preceding period of January 1 through June 30, and no later than January 30 of the following year for the period of July 1 through December 31 for telecommunications companies that owed gross regulatory assessment fees of \$10,000 or more in the preceding calendar year. Rule 25-4.0161, Florida Administrative Code, also provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

On February 1, 1999, staff learned that Peoples had not submitted its January 1 through June 30, 1998 regulatory assessment fees due by July 30, 1998, nor has Peoples submitted its July 1 through December 31, 1998 regulatory assessment fees due January 30, 1999. Peoples paid in excess of \$10,000 in regulatory assessment fees in 1997, and therefore, is required to pay regulatory assessment fees twice this year. Peoples was audited in 1997, and staff found an underpayment of regulatory assessment fees for January 1 through June 30, and July 1 through December 31 in 1997 by \$4342.22. Peoples was notified and it paid the regulatory assessment fees due on August 7, 1998, but Peoples still owes interest for 1997 that has not been paid to date.

Peoples has repeatedly failed to comply with Rule 25-4.0161, Florida Administrative Code, by submitting its regulatory assessment fees late. Staff recommends the Commission assess a \$500 fine for failure to comply with Commission rules or cancel Certificate No. 84 if the fine, and the 1998 and 1997 regulatory assessment fees, statutory penalties and interest, are not paid within the specified time.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, an Order to Show Cause will be issued. If Peoples timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. The docket should also remain open to process any protest to Issue 2 that may be filed within 21 days of the issuance of the Order by a person whose substantial interests are affected by the Commission's Proposed Agency Action. If Peoples does not respond to the Commission's Order to Show Cause, the fine should be assessed, and the company will have five (5) business days from the end of the show cause response period to pay the fine. If Peoples does not respond to the Commission's Show Cause Order within 20 days of the issuance of the show cause order, the fine should be assessed. The fine shall be paid within five business days of the end of the show cause response period and forwarded to the Office of the Comptroller for deposit into the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If no timely protest to Issue 2 is filed and Peoples fails to respond to the Proposed Agency Action to Show Cause, this docket may be closed. (COX)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, an Order to Show Cause will be issued. If Peoples timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. The docket should also remain open pending the resolution of any protest to Issue 2 that may be filed within 21 days of the issuance of the Order by a person whose substantial interests are affected by the Commission's Proposed Agency Action. If Peoples does not respond to the Commission's Show Cause Order within 20 days of the issuance of the show cause order, the fine should be assessed. The fine shall be paid within five business days of the end of the show cause response period and forwarded to the Office of the Comptroller for deposit into the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If no timely protest of Issue 2 is filed and Peoples fails to respond to the Proposed Agency Action, this docket may be closed.

25-24.515 Pay Telephone Service.

(1) Pay stations shall be lighted during the hours of darkness when light from other sources is not adequate to read instructions and use the instrument.

(2) Each telephone station shall return any deposited amount if the call is not completed, except messages to a Feature Group A access number.

(3) Each telephone station shall permit access to the universal telephone number "911", where operable, without requiring the use of a coin, paper money, or a credit card. Where such number is not operable, the station shall permit access to a local exchange company toll operator under the same conditions.

(4) Each telephone station shall, without charge, permit access to local directory assistance and the telephone number of any person responsible for repairs or refunds but may provide access by coin return. Any long distance directory assistance charges applied to the pay telephone service company may be passed on to the customer.

(5) Each telephone station shall be equipped with a legible sign, card, or plate of reasonable permanence which shall identify the following: telephone number and location address of such station, name of the certificate holder and the party responsible for repairs and refunds, address of responsible party, free phone number of responsible party, clear dialing instructions (including notice of the lack of availability of local or toll services), and, where applicable, a statement that the phone is not maintained by the local exchange company. For those pay stations that will terminate conversation after 15 minutes, notice shall be included on the sign card as well as an audible announcement 30 seconds prior to termination of the phone call.

(6) Each telephone station which provides access to any interexchange company shall provide coin free access, except for feature group A access, to all locally available interexchange companies. For pay stations in equal access areas, such access shall be provided through the forms of access purchased by locally available long distance carriers and shall include 10XXX+0, 950, and 800 access. For those pay stations located in non-equal access areas, 102880 may be translated to 00 to directly access AT&T. Otherwise, in non-equal access areas, 00 shall directly route to an AT&T operator and the instruction card shall so indicate. Where 00 is not available, 0- shall route to the LEC operator for transfer to AT&T and the instruction card shall so indicate. No sales solicitation shall be allowed during the interval between the last digit dialed by the end user and connection with the interexchange carrier.

(7) All intralata calls, including operator service calls, shall be routed to the local exchange company, unless the end user dials the appropriate access code for their carrier of choice, i.e., 950, 800, 10XXX.

(8) Each telephone station shall allow incoming calls to be received, with the exception of those located at confinement facilities, hospitals and schools, and at locations specifically exempted by the Commission. There shall be no charge for receiving incoming calls. Requests for exemption from the requirement that each telephone station allow incoming calls shall be accompanied by a completed FORM PSC/CMU-2 (12/94), which is incorporated into this rule by reference. FORM PSC/CMU-2 (12/94), entitled Request to Block Incoming Calls, may be obtained from the Commission's Division of Communications. The form requires an attestation from the owner of the pay telephone, the owner of the pay telephone location, and the Chief of the responsible law enforcement agency that the request is sought in order to deter criminal activity facilitated by incoming calls being received at the specified pay telephone. A separate form shall be filed for each telephone number for which an exemption is sought. Where incoming calls are not received, central-office based intercept shall be provided at no charge to the end-user and a written notice shall be prominently displayed on the instrument directly above or below the telephone number which states: "Incoming calls blocked at request of law enforcement."

(9) Each telephone station must be connected as provided in the pay telephone access tariff offered by the local exchange company.

(10)(a) Each pay telephone service company shall make all reasonable efforts to minimize the extent and duration of interruptions of service. Service repair programs should have as their objective the restoration of service on the same day that the interruption is reported to the company. (Sundays and holidays excepted.)

(b) Each telephone utility shall conduct its operations in such manner to ensure that, in each exchange, ninety-five (95%) percent of all interruptions in telephone service occurring in any

calendar month shall be cleared and service restored within twenty-four (24) hours (Sundays and holidays excepted) after the trouble is reported to the company, except where such interruptions are caused by emergency situations, unavoidable casualties, and acts of God affecting large groups of subscribers.

(11) Where there are fewer than three telephones located in a group, a directory for the entire local calling area shall be maintained at each station. Where there are three or more telephones located in a group, a directory for the entire local calling area shall be maintained at every other station. However, where telephone stations are fully enclosed, a directory shall be maintained at each station.

(12) Normal maintenance and coin collection activity shall include a review of the cleanliness of each station and reasonable efforts shall be made to ensure that 95% of all stations are clean and free of obstructions.

(13) Except as provided in subsections (14)(a), (14)(b), and (14)(c) below, each telephone station installed after January 5, 1987 shall conform to subsections 4.29.2--4.29.4 and 4.29.7--4.29.8 of the American National Standards Specifications for Making Buildings and Facilities Accessible and Usable by Physically Handicapped People, approved February 5, 1986 by the American National Standards Institute, Inc. (ANSI A117.1-1986), which is incorporated by reference into this rule. Each telephone station installed prior to January 5, 1987 shall conform to the above standards by January 1, 1995.

(a) Effective June 1, 1992, where there are two or more telephone stations located in a group, there shall be a minimum of one telephone per group of ten which conforms to the above mentioned standards. The conforming station must be physically located in the group of telephone stations or within a clear line of sight within 15 feet of the group and free from wheelchair barriers.

(b) Except for locations on floors above or below entry level in buildings not serviced by a ramp or elevator, such stations shall be placed in areas accessible to the physically handicapped.

(c) Stations located in buildings which are not accessible to physically handicapped persons must comply to the above mentioned standards upon modification of the building to make it handicap-accessible, according to the Americans with Disabilities Act.

(14) Effective September 1, 1992, each telephone shall permit end users to input the additional digits necessary to complete calling card calls, using any locally available carrier, without operator intervention, and to utilize features such as voice mail box and menu driven answering devices. This requirement shall not be applicable to pay telephones located in confinement facilities.

(15) Pay stations located in confinement facilities shall be exempt from the requirements of above subsections (1), (3), (4), (6), and (11). Such pay stations shall also be exempt from the requirements of subsection (5), except for the audible and written 15 minute disconnect notification.

(16) Toll Fraud Liability.

(a) A company providing interexchange telecommunications services or local exchange services shall not collect from a pay telephone provider for charges billed to a line for calls which originated from that line through the use of 10XXX+0, 10XXX+01, 950-1/0XXX+0, or 1-800 access code, or when the call originating from that line otherwise reached an operator position, if the originating line is subscribed to outgoing call screening and the call was placed after the effective date of the outgoing call screening order.

(b) A company providing interexchange telecommunications services or local exchange services shall not collect from a pay telephone provider for charges for collect or third number billed calls, if the line to which the call was billed was subscribed to incoming call screening and the call was placed after the effective date of the incoming call screening order.

(c) Any calls billed through the local exchange company or directly by an interexchange company, or through a billing agent, which have been identified as not collectible as described in paragraphs (a) and (b) above, must be removed from any pay telephone provider's bill after the pay telephone provider gives notice of the fraudulent charges to the billing party. Such notice shall be provided to the LEC and IXC in writing no later than the due date of the bill.

(d) The LEC is responsible for charges described in paragraph (c) that are associated with the failure of the LEC's screening services.

(e) The IXC is responsible for charges described in paragraph (c) that are associated with the failure to properly validate calls via the appropriate local exchange company data base.

(f) Definitions: For purposes of this rule the term:

1. "Effective Date" shall mean the date after the call screening order was placed and associated charges apply.

(g) Any charges accrued to a subscriber's line when the subscriber has paid the local exchange company to screen calls described in paragraphs (a) and (b) above shall not be the basis for discontinuance of local and intrastate service.

(17) Providers serving confinement facilities shall provide for completion of all inmate calls allowed by the confinement facility.

Specific Authority 350.127(2) FS.

Law Implemented 364.03, 364.035, 364.063, 364.337, 364.345 FS.

History--New 1-5-87, Amended 4-14-92, 12-21-92, 2-3-93, 10-10-94, 12-27-94, 9-5-95.

ANNOTATIONS

Violations

Fine of \$7,000 was ordered where number of pay telephones of company did not permit, without charge, access to local directory assistance and person responsible for repair or refund; did not display identification and instructional sign or card; did not provide access to all local interexchange companies; did not allow incoming calls to be received; and were not serviced and repaired sufficiently, all in violation of subsections (4), (5), (6), (7), and (10)(a), respectively, of Rule 25-24.515, F.A.C. Amount of fine was justified where company did not act either in response to numerous notices of violations, or within 30 days of order initiating show cause proceedings. In re Initiation of Show Cause Proceedings Against Commercial Ventures, Inc., 91 FPSC 3:67 (1991).