

State of Florida

Public Service Commission

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RECORDS AND  
REPORTING

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**DATE:** March 4, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (COX) *WPC MCB*  
DIVISION OF COMMUNICATIONS (MCCOY) *JM*

**RE:** DOCKET NO. 990200-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST COMMUNICATIONS CENTRAL, INC. FOR VIOLATION OF RULES 25-24.515, F.A.C., PAY TELEPHONE SERVICE.

**AGENDA:** 3/16/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\990200TC.RCM

CASE BACKGROUND

- Communications Central, Inc. (CCI) is a provider of pay telephone service, Certificate No. 2772, and was certified May 8, 1986. It owns and operates approximately 3169 pay telephones in Florida. CCI reported gross operating revenues of \$549,745 and gross intrastate revenues of \$513,050 on its Regulatory Assessment Fee Returns for the period January 1, 1998, through December 31, 1998. As a provider of pay telephone service in Florida, CCI is subject to the rules and regulations of the Commission.

- On July 7, 1997, the Commission initiated a show cause action against CCI for apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service. In Order No. PSC-97-0812-FOF-TC, Docket No. 961286-TC, the Commission approved CCI's settlement proposal to pay a \$3000 contribution to the general revenue fund and submit a report confirming that all of its pay telephones were in compliance with the Commission rules.

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● From January 1, 1997, through December 31, 1998, staff performed 373 evaluations on pay telephones operated by CCI. Staff found a total of 346 apparent rule violations of the Commission's service evaluation standards.

### DISCUSSION OF ISSUES

ISSUE 1.: Should Communications Central, Inc. be ordered to show cause why it should not be fined \$32,000 or Certificate No. 2272 should not be canceled for apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service?

RECOMMENDATION: Yes. The Commission should order CCI to show cause in writing within 21 days of the effective date of the order why it should not have Certificate no. 2272 canceled or be fined \$32,000 for apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service. The company's response must contain specific allegations of fact or law. If CCI fails to respond to the show cause, the fine will be deemed assessed. If the fine is not paid after reasonable collection efforts by the Commission, it should be forwarded to the Office of the Comptroller for collection. If the fine is paid it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (MCCOY)

STAFF ANALYSIS: In routine evaluations conducted from January 1997 through December 1998, staff found 79 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, Pay Telephone Service. (Attachment A, Page 6)

Staff found 10 pay stations that did not allow access to all locally available interexchange carriers. This is an apparent violation of Rule 25-24.515(6), Florida Administrative Code, Pay Telephone Service. (Attachment A, Page 6) CCI's prior show cause proceeding included rule violations for not allowing access to all locally available interexchange carriers.

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Staff found 28 pay stations in which the pay station ringers were turned down low or were completely inoperable, effectively blocking incoming calls at the pay stations. Of the pay stations evaluated by staff, none were posted "No Incoming Calls", and according to Commission records, no waivers had been granted for the pay stations identified. CCI is in apparent violation 25-24.515(8), Florida Administrative Code, Pay Telephone Service. (Attachment A, Page 6) CCI's prior show cause included rule violations of not complying with the incoming call requirements.

Staff found 189 pay stations that did not have a directory or the directory was not current. Of those pay stations evaluated 14 did not have brackets in place to accommodate a directory. This is an apparent violation of Rule 25-24.515(11), Florida Administrative Code, Pay Telephone Service. (Attachment A, Page 7)

Staff found 19 pay stations that did not meet the ANSI standards which went into effect in January, 1987. It appears that CCI continues to have a problem meeting ANSI standards, and is in apparent violation of Rule 25-24.515(13), Florida Administrative Code, Pay Telephone Service. (Attachment A, Pages 7) The prior show cause proceeding against CCI included rule violations for not complying with the ANSI standards.

By Section 364.285, Florida Statutes, the Commission is 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).

Staff believes that CCI's conduct in providing pay telephone services in apparent violation of Commission Rule 25-24.515, 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 titled 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, the 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

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act, such as CCI's conduct in issue here, would meet the standard for a "willful violation."

In the prior show cause proceeding against CCI, the Commission accepted a settlement proposal of \$3,000. 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 CCI be ordered to show cause why it should not be fined \$32,000 or have its certificate canceled.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** If staff's recommendation in Issue 1 is approved, then CCI will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If CCI timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If CCI does not respond to the Commission's Order to Show Cause, the fine should be assessed. The fine shall be forwarded to the Office of the Comptroller for deposit into the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. Staff recommends that if CCI fails to respond to the Order to Show Cause, and the fine is not received within five business days after the expiration of the show cause response period, CCI's certificate should be canceled and this docket closed administratively. (COX)

**STAFF ANALYSIS:** If staff's recommendation in Issue 1 is approved, the CCI will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If CCI timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If CCI does not respond to the Commission's Order to Show Cause, the fine should be assessed. The fine shall be forwarded to the Office of

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the Comptroller for deposit into the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. Staff recommends that if CCI fails to respond to the Order to Show Cause, and the fine is not received within five business days after the expiration of the show cause response period, CCI's certificate should be canceled and this docket closed administratively.

**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, 00 shall 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.

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(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).*