



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

RECEIVED-FPSC
99 MAY 20 AM 9:59
RECORDS AND REPORTING

DATE: MAY 20, 1999

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

FROM: DIVISION OF LEGAL SERVICES (J. MILLER) *CB for J.M.*
DIVISION OF COMMUNICATIONS (KENNEDY) *REK*

RE: DOCKET NO. 990622-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST BEUFORD B. WENTWORTH FOR VIOLATION OF RULE 25-24.515, FLORIDA ADMINISTRATIVE CODE, PAY TELEPHONE SERVICE

AGENDA: 06/01/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990622.RCM

CASE BACKGROUND

- January 26, 1999 -Beuford B. Wentworth's 1998 regulatory assessment fee return reported gross intrastate revenues \$118,308 and 89 pay telephones in operation.
- February 23, 1999 and February 24, 1999 - Staff performed routine service evaluations of four pay telephone stations.
- March 22, 1999 - Staff received a Service Violation Correction Form from Beuford B. Wentworth signifying that all apparent violations were corrected by replacement of signage.
- April 14, 1999 - Staff reevaluated the four pay telephone stations.

DOCUMENT NUMBER-DATE

06373 MAY 20 99

FPSC-RECORDS/REPORTING

DATE: MAY 20, 1999

DISCUSSION OF ISSUES

ISSUE 1: Should Beuford B. Wentworth (BBW) be ordered to show cause why a fine of \$800 for apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, should not be imposed or certificate number 3096 should not be canceled?

RECOMMENDATION: Yes. The Commission should order BBW to show cause in writing within 21 days of the date of the order why he should not have Certificate No. 3096 canceled or be fined \$800 for apparent violation of Rule 25-24.515, Florida Administrative Code. BBW's response must contain specific allegations of fact or law. If BBW fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 3096 should be canceled. If the fine is paid it will be remitted by the Commission to the General Revenue Fund pursuant to Section 364.285, Florida Statutes. (Kennedy)

STAFF ANALYSIS: Staff performed service evaluations of pay telephone stations on February 23, 1999 and February 24, 1999. Through written correspondence, staff notified BBW of the apparent violations.

Staff performed a reevaluation of the same pay telephone stations on April 14, 1999. Although BBW reported that all violations had been corrected, the table provided as Attachment A (page 4) depicts the apparent rule violations that were repeats of violations observed during the initial evaluations.

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 BBW'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

DATE: MAY 20, 1999

distinct from intent to violate a rule." Thus, any intentional act, such as BBW's conduct at issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission find that BBW's apparent violations of Rule 25-24.515, Florida Administrative Code, warrant issuance of a show cause order. BBW should be ordered to show cause within 21 days of the order why he should not be penalized pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, then Beuford B. Wentworth will have 21 days from the issuance of the Commission's show cause order to respond in writing why he should not be fined in the amount proposed or have his certificate canceled. If Beuford B. Wentworth timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the fine is paid it should be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. Staff recommends that if Beuford B. Wentworth 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, Beuford B. Wentworth's certificate should be canceled and this docket closed. (J. Miller)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then Beuford B. Wentworth will have 21 days from the issuance of the Commission's show cause order to respond in writing why he should not be fined in the amount proposed or have his certificate canceled. If Beuford B. Wentworth timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the fine is paid it should be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. Staff recommends that if Beuford B. Wentworth 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, Beuford B. Wentworth's certificate should be canceled and this docket closed.

Pay Telephone Station Number	Rule 25-24.515(9)(a), Florida Administrative Code			
	Address of Responsible Party for Repairs and Refunds Not Displayed	Telephone Number Not Displayed	Location Address Not Displayed	Name of Provider Not Displayed
904-695-9341	X	X	X	X
904-695-9056	X			X
904-724-7950				X
904-725-9811				X