

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

**DATE:** JUNE 17, 1999

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

**FROM:** DIVISION OF LEGAL SERVICES (MILLER) *Jam CB*  
DIVISION OF COMMUNICATIONS (BIEGALSKI) *KB DA*

**RE:** DOCKET NO. 990630-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST 2001 TELECOMMUNICATIONS, INC. FOR VIOLATION OF RULE 25-24.515, FLORIDA ADMINISTRATIVE CODE, PAY TELEPHONE SERVICE

**AGENDA:** 06/29/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\990630.RCM

CASE BACKGROUND

- February 1, 1999 - 2001 Telecommunications, Inc.'s (2001) 1998 regulatory assessment fee return reported gross intrastate revenues of \$3,744,339 and 1800 pay telephones in operation.
- February 15, 1999 - February 24, 1999 - Staff performed routine service evaluations on 50 pay telephones operated by 2001 and found apparent violations as presented in Attachment A.
- March 11, 1999 and March 31, 1999 - Staff received Service Violation Correction Forms from 2001 signifying that all apparent violations were corrected.
- April 19, 1999 - April 26, 1999 - Staff reevaluated the pay telephone stations and again found the apparent violations as presented in Attachment A.

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DISCUSSION OF ISSUES

ISSUE 1: Should 2001 Telecommunications, Inc. be ordered to show cause why a fine of \$3450 for apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, should not be imposed or certificate number 849 should not be canceled?

RECOMMENDATION: Yes. The Commission should order 2001 to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 849 canceled or be fined \$3450 for apparent violation of Rule 25-24.515, Florida Administrative Code. 2001's response must contain specific allegations of fact or law. If 2001 fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 849 should be canceled. 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. (Biegalski)

STAFF ANALYSIS: Staff performed service evaluations of 50 pay telephone stations operated by 2001 on February 15, 1999 through February 24, 1999. Through written correspondence, staff notified 2001 of the apparent violations.

Staff performed a reevaluation of the same pay telephone stations on April 19, 1999 through April 26, 1999. Although 2001 reported that all violations had been corrected, the table provided as Attachment A (pages 5-6) depicts the apparent rule violations that were still present in the reevaluation.

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 2001'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 act, such as 2001's conduct in issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission find that 2001's apparent violations of Rule 25-24.515, Florida Administrative Code, warrant issuance of a show cause order. In this regard, the Commission should order 2001 to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 849 canceled or be fined \$3450 for apparent violation of Rule 25-24.515, Florida Administrative Code. 2001's response must contain specific allegations of fact or law. If 2001 fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 849 should be canceled. 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.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, then 2001 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 2001 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, and this docket closed. Staff recommends that if 2001 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, 2001's certificate should be canceled and this docket closed. (Miller)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then 2001 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 2001 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, and this docket closed. Staff recommends that if 2001 fails to respond to the Order to Show Cause, and the fine is not received within five

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business days after the expiration of the show cause response period, 2001's certificate should be canceled and this docket closed.

Pay Telephone Station Number	25-24.515 (9) (a)			25-24.515 (10)	25-24.515 (8)	25-24.515 (2)
	Telephone Number Not Displayed	Location Address Not Displayed	Provider Name Not Displayed	All IXC's not accessible	Repair/Refund Number Not Working	Not sufficient lighting
954-846-9645			X			
954-846-9571			X			
954-846-9855			X			
954-846-9013			X			
954-846-2594			X			
954-846-9019			X			
954-846-1398			X			
954-846-2634			X			
954-846-9107			X			
954-846-9839			X			
954-846-2535			X			
954-846-9020			X			
954-846-9697			X			
954-846-9017			X			
954-846-9016			X			
954-462-9328		X				
954-583-0126	X	X				
954-462-9151	X	X				
954-462-9345	X	X				
954-462-9322	X	X				
305-538-7691	X	X				

Pay Telephone Station Number	25-24.515(9) (a)			25-24.515(10)	25-24.515(8)	25-24.515(2)
	Telephone Number Not Displayed	Location Address Not Displayed	Provider Name Not Displayed	All IXC's Not Accessible	Repair/Refund Number Not Working	Not Sufficient Lighting
954-763-9420		X	X	X	X	
305-531-6871					X	
954-462-9190						X
954-462-9668						X