

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 (J.MILLER) *Jan ok per ND*
DIVISION OF COMMUNICATIONS (T.E.JOHNSON) *TEJ*

RE: DOCKET NO. 990664-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST COMMUNICATIONS MANAGEMENT SERVICES, 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\CMU\WP\990664.RCM

CASE BACKGROUND

- December 15, 1998 - Communications Management Services, Inc.'s (CMS) 1998 regulatory assessment fee return reported gross intrastate revenues of \$3,900.00. CMS did not report the number of phones in operation.
- February 16, 1999 and February 23, 1999 - Staff performed service evaluations on two pay telephones operated by CMS.
- March 10, 1999 and March 19, 1999 - Staff received Service Violation Correction Forms from CMS signifying that all apparent violations were corrected.
- April 21, 1999 and April 27, 1999 - Staff reevaluated the pay telephone stations. Apparent rule violations continued to occur.

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DISCUSSION OF ISSUES

ISSUE 1: Should Communications Management Services, Inc. be ordered to show cause why a fine of \$200 for apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, should not be imposed or certificate number 5137 should not be canceled?

RECOMMENDATION: Yes. The Commission should order CMS to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 5137 canceled or be fined \$200 for apparent violation of Rule 25-24.515, Florida Administrative Code. CMS' response must contain specific allegations of fact or law. If CMS fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 5137 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. (T.E.Johnson)

STAFF ANALYSIS: Staff performed service evaluations of two pay telephone stations operated by CMS February 16, 1999 and February 23, 1999. Through written correspondence, staff notified CMS of the apparent violations.

Staff performed a reevaluation of the same two pay telephone stations on April 21, 1999 and April 27, 1999. Although CMS reported that all violations had been corrected, the table provided as Attachment A (page 5) 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 CMS' 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 CMS' conduct at issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission find that CMS' apparent violations of Rule 25-24.515, Florida Administrative Code, warrant issuance of a show cause order. In this regard, the Commission should order CMS to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 5137 canceled or be fined \$200 for apparent violation of Rule 25-24.515, Florida Administrative Code. CMS' response must contain specific allegations of fact or law. If CMS fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 5137 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 CMS 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 CMS 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 should be closed. Staff recommends that if CMS 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, CMS' certificate should be canceled and this docket closed. (J.Miller)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then CMS 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 CMS 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 should be closed. Staff recommends that if CMS 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, CMS' certificate should be canceled and this docket closed.

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ATTACHMENT A

Pay Telephone Station Number	25-24.515(9)(a), Florida Administrative Code
	Location Address Not Displayed
954-462-9065	X
954-321-9245	X