



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-

DATE: JUNE 24, 1999

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

FROM: DIVISION OF LEGAL SERVICES (CLEMONS) *pme*
DIVISION OF COMMUNICATIONS (BIEGALSKI) *KB*

RE: DOCKET NO. 990780-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST SKY SHELL, INC. FOR VIOLATION OF RULE 25-24.515, FLORIDA ADMINISTRATIVE CODE, PAY TELEPHONE SERVICE

AGENDA: 07/06/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\990780.RCM

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RECORDS AND REPORTING

CASE BACKGROUND

- January 16, 1999 - Sky Shell, Inc.'s (Sky Shell) 1998 regulatory assessment fee return reported gross intrastate revenues of \$6,120 and 3 pay telephones in operation.
- February 18, 1999 - Staff performed routine service evaluations on three pay telephones operated by Sky Shell and found apparent violations as presented in Attachment A.
- April 1, 1999 - Staff received a Service Violation Correction Form from Sky Shell signifying that all apparent violations were corrected.
- April 22, 1999 - Staff reevaluated the pay telephone stations and again found the apparent violations as presented in Attachment A.

DOCUMENT NUMBER-DATE

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DISCUSSION OF ISSUES

ISSUE 1: Should Sky Shell, Inc. be ordered to show cause why a fine of \$1200 for apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, should not be imposed or certificate number 4246 should not be canceled?

RECOMMENDATION: Yes. The Commission should order Sky Shell to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 4246 canceled or be fined \$1200 for apparent violation of Rule 25-24.515, Florida Administrative Code. Sky Shell's response must contain specific allegations of fact or law. If Sky Shell fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 4246 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 a service evaluation on pay telephone stations operated by Sky Shell on February 18, 1999. Through written correspondence, staff notified Sky Shell of the apparent violations.

Staff performed a reevaluation of the same pay telephone stations on April 22, 1999. Although Sky Shell reported that all violations had been corrected, the table provided as Attachment A (page 5) depicts the apparent rule violations discovered in the first inspection 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 Sky Shell'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

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"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 Sky Shell's conduct in issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission find that Sky Shell's apparent violation of Rule 25-24.515, Florida Administrative Code, warrant issuance of a show cause order. In this regard, the Commission should order Sky Shell to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 4246 canceled or be fined \$1200 for apparent violation of Rule 25-24.515, Florida Administrative Code. Sky Shell's response must contain specific allegations of fact or law. If Sky Shell fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 4246 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 Sky Shell 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 Sky Shell 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 Sky Shell 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, Sky Shell's certificate should be canceled and this docket closed. (Clemons)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then Sky Shell 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 Sky Shell 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 Sky Shell fails to

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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, Sky Shell's certificate should be canceled and this docket closed.

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ATTACHMENT A

Pay Telephone Station Number	25-24.515(9)(a)			25-24.515(2)	25-24.515(3)
	Correct Address of Location Not Listed	No Address for Repairs/Refunds	Name of Provider Not Displayed	Insufficient Lighting	Automatic Coin Return Did Not Function Properly
954-584-3062	X	X	X		
954-583-0824	X	X	X	X	X
954-583-0813	X	X	X	X	