

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause
proceedings against
Communications Management
Services, Inc. for apparent
violation of Rule 25-24.515,
F.A.C., Pay Telephone Service.

DOCKET NO. 990664-TC
ORDER NO. PSC-99-1306-SC-TC
ISSUED: July 7, 1999

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Communications Management Services, Inc. (CMS) currently holds Certificate of Public Convenience and Necessity No. 5137, granted by this Commission on April 11, 1997, authorizing the provision of pay telephone service. On December 15, 1998, the 1998 regulatory assessment fee return of CMS reported \$3,900 in gross intrastate revenues. CMS did not report the number of pay telephones in operation.

On February 16 and February 23, 1999, our staff performed routine service evaluations on pay telephone stations operated by Communications Management Services, Inc. On March 10 and March 19, 1999, our staff received Service Violation Correction Forms from CMS signifying that all apparent violations were corrected.

On April 21 and April 27, 1999, our staff reevaluated the pay telephone stations. Although CMS reported that all violations had been corrected, the table provided as Attachment A, incorporated herein by reference, depicts the apparent rule violations that were the same violations observed during the initial evaluations.

DOCUMENT NUMBER-DATE

08134 JUL-79

FPSC-RECORDS/REPORTING

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By Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 per day 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 this 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).

We believe that CMS'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 CMS's conduct at issue here, would meet the standard for a "willful violation."

Accordingly, CMS is hereby ordered to show cause in writing within 21 days of the date of this Order why CMS should not have Certificate No. 5137 canceled or be fined \$200 for apparent violation of Rule 25-24.515, Florida Administrative Code. CMS's response must contain specific allegations of fact or law.

If CMS timely responds to this show cause order, this docket shall remain open pending resolution of the show cause proceeding. If CMS fails to respond to this show cause order, and the fine is not paid within five business days after the expiration of the show cause response period, certificate number 5137 shall be canceled and this docket closed. If the fine is timely paid, it will be remitted by this Commission to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, and this docket shall be closed.

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Based on the foregoing, it is

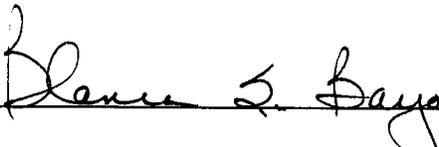
ORDERED by the Florida Public Service Commission that Communications Management Services, Inc. shall show cause in writing within 21 days of the date of this Order why it should not be fined \$200 for apparent violation of Rule 25-24.515, Florida Administrative Code. It is further

ORDERED that any response to this Order to Show Cause filed by Communications Management Services, Inc. shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, waiver of right to a hearing, and will result in the automatic assessment of the \$200 fine. It is further

ORDERED that in the event Communications Management Services, Inc. fails to respond to this Order and the fine is not received within five business days after the expiration of the show cause response period, certificate number 5137 shall be canceled and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of July, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

JAM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 28, 1999.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

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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

Requisition for Photocopying and Mailing

Date 7/7/99
 Number of Originals 5 Copies Per Original 17
 Requested By Mark K.

Item Presented

Agenda For (Date) _____ Order No. 99-1306 In Docket No. 99068047C
 Notice of _____ For (Date) _____ In Docket No. _____
 Other _____

Special Handling Instructions

Distribution/Mailing

Number	Distributed/Mailed To	Number	Distribution/Mailed To
<u>17</u>	<u>Commission Offices</u>		
<u>1</u>	<u>Docket Mailing List - Mailed</u>		
<u>0</u>	<u>Docket Mailing List - Faxed</u>		

Note: Items must be mailed and/or returned within one working day after issue unless specified here:

Print Shop Verification

Job Number 73 Verified By M. Lopez
 Date and Time Completed 7/8 Job Checked For Correctness and Quality (Initial) _____

Mail Room Verification

Date Mailed _____ Verified By _____

M E M O R A N D U M

July 6, 1999

RECEIVED-FPSC

99 JUL -7 PM 1:43

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (MILLER) *Jam CB*

RE: DOCKET NO. 990664-TC - INITIATION OF SHOW CAUSE
PROCEEDINGS AGAINST COMMUNICATIONS MANAGEMENT
SERVICES, INC. FOR APPARENT VIOLATION OF RULE 25-
24.515, F.A.C., PAY TELEPHONE SERVICE.

99-1300-5C

Attached is an ORDER TO SHOW CAUSE, to be issued in the above-
referenced docket. (Number of pages in order - 5)

JAM/anc
Attachment
cc: Division of Communications
I: 990664.jam

lcert