



# 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:** JULY 15, 1999

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

**FROM:** DIVISION OF LEGAL SERVICES (FORDHAM) *254- CB*  
DIVISION OF COMMUNICATIONS (BIEGALSKI) *VB*

**RE:** DOCKET NO. 990781-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST SMBR, INC. FOR VIOLATION OF RULE 25-24.515, FLORIDA ADMINISTRATIVE CODE, PAY TELEPHONE SERVICE AND RULE 25-4.0161, FLORIDA ADMINISTRATIVE CODE, REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES

**AGENDA:** 07/27/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\990781.RCM

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### CASE BACKGROUND

- December 10, 1998 - The 1998 Regulatory Assessment Fee forms were mailed.
- February 22, 1999 - Staff performed routine service evaluations on pay telephones operated by SMBR, Inc. (SMBR) and found apparent violations as presented in Attachment A.
- March 12, 1999 - 1998 Regulatory Assessment Fee delinquent notices were mailed.
- March 12, 1999 - Staff received a Service Violation Correction Form from SMBR signifying that all apparent violations were corrected.

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- April 13, 1999 - Staff reevaluated the pay telephone stations and again found the apparent violations as presented in Attachment A.
- June 23, 1999 - SMBR has not submitted its 1998 regulatory assessment fee return. Therefore, staff cannot determine its gross intrastate revenues or how many pay telephones are in operation.

#### DISCUSSION OF ISSUES

ISSUE 1: Should SMBR, Inc. be ordered to show cause why a fine of \$1,000 for apparent violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, should not be imposed or certificate number 5597 should not be canceled?

RECOMMENDATION: Yes. The Commission should order SMBR to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 5597 canceled or be fined \$1,000 for apparent violations of Rule 25-24.515, Florida Administrative Code. SMBR's response must contain specific allegations of fact or law. If SMBR fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 5597 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 on pay telephone stations operated by SMBR on February 22, 1999. Through written correspondence, staff notified SMBR of the apparent violations.

Staff performed a reevaluation of the same pay telephone stations on April 13, 1999. Although SMBR reported that all violations had been corrected, the table provided as Attachment A (page 6) 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

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

Accordingly, staff recommends that the Commission find that SMBR'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 SMBR to show cause in writing within 21 days of the date of the order why it should not have Certificate No. 5597 canceled or be fined \$1,000 for apparent violations of Rule 25-24.515, Florida Administrative Code. SMBR's response must contain specific allegations of fact or law. If SMBR fails to respond to the show cause, and the fine is not paid after reasonable collection efforts by the Commission, certificate number 5597 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.

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**ISSUE 2:** Should SMBR, Inc. Be ordered to show cause why a fine of \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, should not be imposed?

**RECOMMENDATION:** Yes. The Commission should order SMBR to show cause in writing within 21 days of the date of the order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code. SMBR's response must contain specific allegations of fact or law. If SMBR fails to respond to the show cause order, the fines should be deemed assessed. If the fines and regulatory assessment fees, along with statutory penalties and interest, are not paid within 5 business days after the Order becomes final, it should be forwarded to the Office of the Comptroller for collection. 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:** Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Staff was notified by the Division of Administration on June 23, 1999 that SMBR had not paid its 1998 regulatory assessment fees, plus statutory penalties and interest. Therefore, SMBR has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

Accordingly, staff recommends that the Commission order SMBR to show cause in writing within 21 days of the date of the order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code. SMBR's response must contain specific allegations of fact or law. If SMBR fails to respond to the show cause order, the fines should be deemed assessed. If the fines and regulatory assessment fees, along with statutory penalties and interest, are not paid within 5 business days after the Order becomes final, it should be forwarded to the Office of the Comptroller for collection. 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.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** If staff's recommendation in Issue 1 is approved, then SMBR 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 staff's recommendation in Issue 2 is approved, then SMBR 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. If SMBR timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If SMBR does not respond to the show cause order, and the fines and fees, including statutory penalties and interest, are not received within five business days after the expiration of the show cause response period then SMBR's certificate should be canceled for the violations cited in Issue 1 and the fines in Issue 2 should be imposed for the violations cited in Issue 2. This docket can then be closed administratively. (Fordham)

**STAFF ANALYSIS:** If staff's recommendation in Issue 1 is approved, then SMBR 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 staff's recommendation in Issue 2 is approved, then SMBR 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. If SMBR timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If SMBR does not respond to the show cause order, and the fines and fees, including statutory penalties and interest, are not received within five business days after the expiration of the show cause response period then SMBR's certificate should be canceled for the violations cited in Issue 1 and the fines in Issue 2 should be imposed for the violations cited in Issue 2. This docket can then be closed administratively.

Pay Telephone Station Number	25-24.515(9) (a)					25-24.515(9) (b)
	Correct Address of Location Not Listed	Legible/Correct Telephone Number Not Posted	No Address for Repairs/Refunds	Name of Provider Not Displayed	Local Coin Rate Not Posted	Clear and Accurate Dialing Instructions Not Displayed
850-656-4571	X	X	X	X		X
850-656-3903	X		X	X	X	X

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