

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

**DATE:** JANUARY 20, 2000

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

**FROM:** DIVISION OF LEGAL SERVICES (CALDWELL) *Over BK RMT*  
DIVISION OF COMMUNICATIONS (BIEGALSKI) *WB*

**RE:** DOCKET NO. 992031-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST DIGITAL NETWORK SERVICES, INC. D/B/A DIGITAL NETWORK OPERATOR SERVICES, INC. FOR APPARENT VIOLATION OF RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES

**AGENDA:** 2/1/00 - REGULAR AGENDA - ISSUE 1 - SHOW CAUSE - ISSUE 2 - PROCEDURAL MATTER - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\992031.RCM

### CASE BACKGROUND

- July 25, 1996 - Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. (Digital) obtained Florida Public Service Commission Interexchange Telecommunications Certificate Number 4450.
- July 29, 1999 - Staff mailed a certified letter to Digital requesting information pertaining to its operator service provider rates listed in its tariff. Staff requested a response by August 16, 1999. (Attachment A, Page 6)
- August 2, 1999 - Digital signed for and received the certified letter. (Attachment B, Page 7)

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FPSC-RECORDS/REPORTING

- October 25, 1999 - Digital paid its 1998 regulatory assessment fees, but did not state its intrastate revenues.
- January 13, 2000 - To date, staff has not received a response to its certified letter.

### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. be ordered to show cause why a fine of \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries should not be imposed or Certificate Number 4450 should not be canceled?

**RECOMMENDATION:** Yes. The Commission should order Digital to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have Certificate Number 4450 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact or law. If Digital fails to respond to the show cause, and the fine is not paid within 10 business days after the 21 day show cause period, Certificate Number 4450 should be canceled. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(Biegalski)**

**STAFF ANALYSIS:** Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Staff sent a certified letter to Digital on July 29, 1999, and requested a written response by August 16, 1999. The letter was signed for and received by Digital on August 2, 1999. To date, staff has not received a response from Digital. In this regard, it

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appears that Digital is in violation of Rule 25-4.043, Florida Administrative Code.

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 Digital's conduct in failing to respond to Commission staff's inquiries in apparent violation of Commission Rule 25-4.043, 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 Digital's conduct in issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission order Digital to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have Certificate Number 4450 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact or law. If Digital fails to respond to the show cause, and the fines are not paid within 10 business days after the 21 day show cause period, Certificate Number 4450 should be canceled. If the fines are paid, they should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

**ISSUE 2:** Should the Commission order Digital Network Services, Inc. d/b/a Digital Network Operator Services, Inc. to provide a written response addressing the questions in staff's July 29, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's order?

**RECOMMENDATION:** Yes. The Commission should order Digital to provide a written response addressing the questions in staff's July 29, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's order. If the information is not provided in accordance with the Commission Order, a show cause proceeding may be initiated. **(Biegalski)**

**STAFF ANALYSIS:** On July 29, 1999, staff mailed a letter to Digital requesting information related to the operator service provider rates in its tariff. Staff requested a response by August 16, 1999. The letter was signed for and received on August 2, 1999, but to date, staff has not received a response.

Therefore, the Commission should order Digital to provide a written response addressing the questions in staff's July 29, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's Order. If the information is not provided in accordance with the Commission Order, a show cause proceeding may be initiated.

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

**RECOMMENDATION:** If staff's recommendation in Issue 1 is approved, then Digital will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not have its certificate canceled or be fined in the amount proposed. If Digital timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. This docket should also remain open pending the receipt of the information requested in staff's July 29, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's Order.

Staff recommends that if Digital fails to respond to the Order to Show Cause, and the fine is not received within ten business days after the expiration of the show cause response period, the company's certificate should be canceled. If the requested information is not provided within ten business days of the issuance of the Commission's Order, this docket should remain open pending the initiation of further show cause proceedings. If Digital provides the requested information, and pays the fine recommended in Issue 1, this docket should be closed. (Caldwell)

**STAFF ANALYSIS:** If staff's recommendation in Issue 1 is approved, then Digital will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not have its certificate canceled or be fined in the amount proposed. If Digital timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. This docket should also remain open pending the receipt of the information requested in staff's July 29, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's Order.

Staff recommends that if Digital fails to respond to the Order to Show Cause, and the fine is not received within ten business days after the expiration of the show cause response period, the company's certificate should be canceled. If the requested information is not provided within ten business days of the issuance of the Commission's Order, this docket should remain open pending the initiation of further show cause proceedings. If Digital provides the requested information, and pays the fine recommended in Issue 1, this docket should be closed.