

State of Florida



**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-**

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REPORTING AND

**DATE:** MAY 25, 2000

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

**FROM:** DIVISION OF LEGAL SERVICES (KNIGHT) *WPK DL*  
DIVISION OF TELECOMMUNICATIONS (M. WATTS) *MWA*

**RE:** DOCKET NO. 000482-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST MARIA E. DELGADO D/B/A GLOBAL COMMUNICATION FOR APPARENT VIOLATION OF RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES

**AGENDA:** 6/6/00 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\000482.RCM

**CASE BACKGROUND**

- **11/04/94** - Maria E. Delgado d/b/a Global Communication (Global), obtained Florida Public Service Commission PATS Certificate No. 3874.
- **01/19/00** - Staff evaluated pay telephone number (813) 254-7431 in Tampa.
- **01/27/00** - Staff mailed the company a letter which informed it of the violations found in Tampa and requested a response by February 11, 2000.
- **01/29/00** - Staff evaluated pay telephone number (727) 847-3794 in New Port Richey.

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- **01/31/00** - Global reported \$84,042.32 revenues on its 1999 regulatory assessment fee return.
- **02/02/00** - Staff mailed the company a letter which informed it of the violations found in New Port Richey and requested a response by February 22, 2000.
- **02/22/00** - The company did not respond to either letter; therefore, staff mailed the company a certified letter and requested a response by March 8, 2000.
- **02/25/00** - The USPS returned the receipt, which showed the certified letter was signed for and delivered on this date.
- **03/16/00 - 04/17/00** - Staff called the telephone number listed in the Master Commission Directory for the company four times during this period and left a message for a return call. No return calls were received.

Staff believes the following recommendations are appropriate.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission order Maria E. Delgado d/b/a Global Communication to show cause why it should not be fined \$10,000 or have Certificate No. 3874 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

**RECOMMENDATION:** Yes. The Commission should order Global to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 or have its certificate canceled 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 and law. If Global fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and Certificate No. 3874 should be canceled. If the fine is paid, it should be remitted to the Commission and forwarded to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(M. Watts)**

**STAFF ANALYSIS:** Rule 25-4.043, F.A.C., 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 wrote the company on January 27, February 2, and February 22, 2000 (certified letter). Each letter requested a response within 15 days. In addition to the correspondence, staff called the company four times, March 16, March 27, April 4 and April 17, 2000. Although the company has had ample opportunity, as of April 20, the company has not responded to staff's inquiries.

The company has not complied with the requirements of this rule despite staff's efforts to contact it by mail and by telephone. 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 Global's conduct in failing to respond to staff 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 Global's conduct at issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission order Global to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 or have its certificate canceled 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 and law. If Global fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and Certificate No. 3874 should be canceled. If the fine is paid, it should be remitted to the Commission and forwarded to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** If staff's recommendation is approved, then Global 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 Global timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If Global does not respond to the show cause order, and the fine is not received within 10 business days after the expiration of the show cause response period, then Global's certificate should be canceled for the violation cited in Issue 1. This docket may then be closed administratively. **(Knight)**

**STAFF ANALYSIS:** If staff's recommendation is approved, then Global 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 Global timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If Global does not respond to the show cause order, and the fine is not received within 10 business days after the expiration of the show cause response period, then Global's certificate should be canceled for the violation cited in Issue 1. This docket may then be closed administratively.