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Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED
APR 19 2001
PUBLIC SERVICE COMMISSION

DATE: APRIL 19, 2001

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

FROM: DIVISION OF LEGAL SERVICES (F. BANKS) *FEB used for BK*
DIVISION OF CONSUMER AFFAIRS (P. LOWERY) *PLC*
DIVISION OF COMPETITIVE SERVICES (M. WATTS) *MTA*

RE: DOCKET NO. 010206-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST TELQUEST COMMUNICATIONS, INC. D/B/A ADVANTAGE PLUS TELECOMMUNICATIONS, INC. FOR APPARENT VIOLATION OF RULES 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES, AND 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 05/1/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010206.RCM

CASE BACKGROUND

- August 30, 1999 - Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. (Telquest) obtained Florida Public Service Commission interexchange (IXC) certificate no. 7111.
- January 25, 2000 - Telquest reported \$151.53 in intrastate revenue for 1999.
- March 20, 2000 through October 26, 2000 - The Florida Public Service Commission attempted to investigate five consumer complaints (Attachment A, page 10) against Telquest.

DOCUMENT NUMBER-DATE

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TRSO-RECORDS REPORTING

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- December 5, 2000 - Staff mailed the 2000 Regulatory Assessment Fee (RAF) form to Telquest.
- February 12, 2001 - Staff opened this docket to initiate show cause proceedings against Telquest for apparent violation of Rules 25-4.043 and 25-4.0161, Florida Administrative Code.
- February 21, 2001 - Staff mailed a delinquent notice to Telquest regarding the RAF.
- April 10, 2001 - To date, Telquest has neither responded to the complaints nor submitted its RAF.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285 and 364.336, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. to show cause in writing why it should not be fined \$10,000 per violation, for a total of \$50,000, or have certificate no. 7111 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. The Commission should order Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 per violation, for a total of \$50,000, or have certificate number 7111 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. Telquest's response should contain specific allegations of fact and law. If Telquest 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, the facts should be deemed admitted, the right to a hearing should be deemed waived and the fine should be deemed assessed. If the fine is not paid within 10 business days after the end of the 21-day response period, then, in lieu of the fine, certificate number 7111 should be canceled administratively. 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. **(M. Watts)**

STAFF ANALYSIS: Rule 25-4.043, Florida Administrative Code, 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.

When staff received no response to the first three complaints listed in Attachment A, page 10, sent to the company via facsimile, it started sending the complaints to the company via the United States Postal Service (USPS) as well as facsimile. The last two complaints mailed to the company were returned by the USPS with a message that indicated the company moved and left no forwarding address.

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 the conduct of Telquest, by failing to respond to Commission staff inquiries, in apparent violation of 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, 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 the conduct of Telquest at issue here, would meet the standard for a "willful violation."

The recommended fine amount is consistent with previous amounts used for recent similar violations in Docket Nos. 000034-TI, Initiation of show cause proceedings against Carib Comm, Limited Partnership for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries; and fine assessment for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, and 000035-TI, Initiation of show cause proceedings against American Network Exchange, Inc. d/b/a AMNEX for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries; and fine assessment for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Therefore, since Telquest has not responded to Commission staff inquiries for more than a year, staff believes the Commission should order Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 per violation, for a total of \$50,000, or have certificate number 7111 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff

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Inquiries. Telquest's response should contain specific allegations of fact and law. If Telquest 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, the facts should be deemed admitted, the right to a hearing should be deemed waived and the fine should be deemed assessed. If the fine is not paid within 10 business days after the end of the 21-day response period, then, in lieu of the fine, certificate number 7111 should be canceled administratively. 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.

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ISSUE 2: Should the Commission order Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. to show cause why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should order Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. The company's response should contain specific allegations of fact and law. If Telquest 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, the facts should be deemed admitted, the right to a hearing should be deemed waived, and the fine should be deemed assessed. If the fine and fees are not paid within ten business days after the Order becomes final, they should be forwarded to the Office of the Comptroller for collection. If the fine and fees are paid, the fine should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(M. Watts)**

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, requires the payment of RAF 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.

The Division of Administration's records show that Telquest had not paid its 2000 RAF in full, plus statutory penalty and interest charges. Therefore, it appears the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, and has not requested cancellation of its certificate in compliance with Rule 25-24.474, Florida Administrative Code. Staff believes that the failure of Telquest to pay its RAF constitutes a willful violation of a lawful rule of the Commission under the same legal analysis as set forth in Issue 1.

Accordingly, staff recommends that the Commission order Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications

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Companies. The company's response should contain specific allegations of fact and law. If Telquest 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, the facts should be deemed admitted, the right to a hearing should be deemed waived, and the fine should be deemed assessed. If the fine and fees are not paid within ten business days after the Order becomes final, they should be forwarded to the Office of the Comptroller for collection. If the fine and fees are paid, the fine should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 1 is approved, Telquest 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 Telquest timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If Telquest fails to respond to the Order to Show Cause within the 21-day show cause response period and the fine is not received within ten business days after the expiration of the show cause response period, certificate number 7111 should be canceled and this docket may be closed administratively if all other issues are closed.

If staff's recommendation in Issue 2 is approved, Telquest 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 Telquest timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If Telquest fails to respond to the show cause order, the fine should be deemed assessed. If the fine and fees are not received within ten business days after the expiration of the show cause response period, they should be forwarded to the Office of the Comptroller for collection and this docket may be closed administratively if all other issues are closed. **(Banks)**

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, Telquest 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 Telquest timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If Telquest fails to respond to the Order to Show Cause within the 21-day show cause response period and the fine is not received within ten business days after the expiration of the show cause response period, certificate number 7111 should be canceled and this docket may be closed administratively if all other issues are closed.

If staff's recommendation in Issue 2 is approved, Telquest 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 Telquest timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If Telquest fails to respond to the show

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cause order, the fine should be deemed assessed. If the fine and fees are not received within ten business days after the expiration of the show cause response period, they should be forwarded to the Office of the Comptroller for collection and this docket may be closed administratively if all other issues are closed.

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ATTACHMENT A

TELQUEST COMPLAINTS WITH NO RESPONSE

<u>COMPLAINT NO.</u>	<u>DATE RECEIVED</u>	<u>HOW SENT</u>
311188T	3/20/00	FAX
314115T	4/12/00	FAX
315669T	4/25/00	FAX
323280T	7/7/00	FAX/U.S. MAIL
343049T	10/26/00	FAX/U.S. MAIL