

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation  
of Supreme Telecom Systems, Inc.  
for apparent violation of Rule  
25-24.910, F.A.C., Certificate  
of Public Convenience and  
Necessity Required.

DOCKET NO. 030040-TI  
ORDER NO. PSC-03-0345-PAA-TI  
ISSUED: March 11, 2003

The following Commissioners participated in the disposition of  
this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION  
ORDER IMPOSING PENALTIES

I. CASE BACKGROUND

On August 7, 2002, our staff became aware of a prepaid telephone calling card issued by Supreme Telecom Systems, Inc. (STS), using the acronym STS, a company not holding a Certificate of Public Convenience and Necessity (certificate) issued by this Commission. On October 22, 2002, our staff sent a certified letter via U.S. Postal Service and facsimile to STS. A response was due on November 6, 2002, and a U.S. Postal Service green card receipt indicates that the company received the letter on October 28, 2002.

On October 23, 2002, Mr. Peter Texiera at STS contacted our staff regarding the letter. He stated that the *Express Call* phone card is a STS product and is sold in the Tampa Bay area. He also stated that he would respond to the consumer complaint and submit an application for an IXC certificate. Failing to receive confirmation that the consumer complaint had been resolved, and having not received an application for an IXC certificate, our staff sent a second certified letter to STS on November 14, 2002,

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with a response due by November 29, 2002, and received confirmation of its receipt on November 18, 2002. Failing to garner a response, our staff sent another request for the submission of a certificate application on November 29, 2002.

On December 10, 2002, we received a hand written letter from Mr. Texiera on behalf of STS stating that the company has resolved the customer's complaint and that he would be contacting our staff to obtain information on filing an application. STS made no further contact.

On December 13, 2002, our staff confirmed that the consumer was satisfied with the company's resolution and closed the complaint that initiated this matter, and on January 9, 2003, this docket was opened to address STS's apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required.

We are vested with jurisdiction over this matter pursuant to Sections 364.285, and 364.337, Florida Statutes.

## II. ANALYSIS

Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, states:

A company shall not provide PPCS without first obtaining a certificate of public convenience and necessity as a local exchange company, alternative local exchange company, or interexchange company. The name used as the provider of PPCS printed on the prepaid calling card shall appear identical to the name in which the certificate is issued. A "doing business as" name may be used in lieu of the certificated name if it is registered as a fictitious name with the Florida Division of Corporations and reflected on the certificate before the name is used on the card.

STS is providing prepaid calling services to the public in Florida without obtaining a certificate, in apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The company indicated to our

staff, both verbally and in writing, that it would apply for a certificate. Our staff initially requested that STS submit its application by November 13, 2002, and on November 29, 2002, our staff made a second request for STS to submit its application. STS has yet to file its application. We find that the company is aware of its requirement to obtain a certificate and has had sufficient time to submit its application.

Further, STS's apparent violation of Rule 25-24.910, Florida Administrative Code, is "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, we 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 STS's conduct at issue here, would meet the standard for a "willful violation."

By Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to its 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).

Therefore, we find it appropriate to impose a \$25,000 penalty on STS for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The penalty shall be paid to the Florida Public Service Commission and forwarded to the Department of Financial Services for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If this Order is not protested and the payment of the penalty is not received within fourteen calendar days after the issuance of the Consummating Order, the collection of the penalty shall be referred to the

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Department of Financial Services, and this docket shall be closed. Further, If STS fails to timely protest this Order, and fails to obtain an IXC Certificate of Public Convenience and Necessity, the company shall also be required to immediately cease and desist providing prepaid calling services in Florida upon issuance of the Consummating Order until the company obtains an IXC Certificate of Public Convenience and Necessity.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Supreme Telecom Systems, Inc. is hereby penalized in the amount of \$25,000 for failure to comply with Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. It is further

ORDERED that the provisions of this order be issued as a proposed agency action and shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further


ORDERED that if the penalties are not received within 14 calendar days after issuance of the Consummating Order, the amount shall be forwarded to the Department of Financial Services for collection. It is further

ORDERED that if Supreme Telecom Systems, Inc. fails to timely protest this Commission's Order, or fails to obtain an IXC Certificate of Public Convenience and Necessity, upon issuance of the Consummating Order the company will be required to immediately cease and desist providing interexchange telecommunications services in Florida until it obtains an IXC Certificate of Convenience and Necessity. It is further

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ORDERED that this docket be closed administratively upon either the receipt of the payment of the penalties, or upon referral of the penalties to the Department of Financial Services for collection.

By ORDER of the Florida Public Service Commission this 11th Day of March, 2003.

  
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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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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 that is available under Section 120.57, 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 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.

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The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 1, 2003.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.