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FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED

MEMORANDUM

March 26, 1998

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FPSC - Records/Reporting

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

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *MCB for BK*
 DIVISION OF COMMUNICATIONS (BIEGALSKI) *MCB WDH/HR*

RE: DOCKET NO. 980336-TI - INITIATION OF SHOW CAUSE
 PROCEEDING AGAINST CORAL COMMUNICATIONS, INC. FOR
 VIOLATION OF RULE 25-24.470, FLORIDA ADMINISTRATIVE CODE,
 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED

AGENDA: 04/07/98 - REGULAR AGENDA - ISSUE 1 - SHOW CAUSE -
 ISSUES 2, 3, AND 4 - PROPOSED AGENCY ACTION -
 INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\980336TI.RCM

CASE BACKGROUND

On March 3, 1998, staff observed shoppers submitting Coral entry forms into an entry box at Tallahassee Mall. Based on informal conversations with some shoppers, staff believes that few, if any, shoppers entering the contest realized that they were obligating themselves to a \$7.50 recurring monthly charge for the discount calling card on their local exchange telephone bill by entering. Moreover, staff believes the entry form itself is deceptive and misleading because it alternately states the service is a travel card, then a calling card with \$.25 per minute usage rates and finally, that a charge of \$.25 per day and a \$2.99 set up fee applies whether the service is used or not. The form also states that "your telephone service will not change", even though contestants will all likely be charged additional fees. Staff also notes that the form fails to specify any drawing date, and staff is informed that the "contest" is not registered as required with the Secretary of State and that other states, including Illinois, have announced investigations of Florida-based Coral. (Attachment A, Page 7) While the Commission has no complaints against Coral at this time, staff recommends a proactive approach to prevent

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 980336-TI
DATE: March 26, 1998

unauthorized billing because staff is aware that Floridians have been entering Coral's so-called contest, thereby making themselves subject to being billed by Coral at a later time on local exchange company bills. Staff believes the activities of Coral Communications, Inc. (Coral) constitutes "cramming" of unauthorized charges on local phone bills.

Prior to observing the 4-wheel drive display and entry forms at Tallahassee Mall, the Commission received information that Coral Communications, Inc. may also be providing telecommunications service without a certificate. On January 27, 1998, staff sent a certified letter regarding certification and application packet to Coral. Coral signed for the certified letter, but did not respond. Staff sent a second certified letter on February 26, 1998. In the interim, staff received a response from Coral on February 23, 1998 stating it had no knowledge that its product was being marketed in Florida.

Because it appears as though Coral is providing (or offering to provide without the required disclosures) telecommunications service without a certificate by offering a discount calling card service and Coral has not yet obtained certification, we believe the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Coral Communications, Inc. to show cause why it should not be fined \$25,000 per day for apparent failure to comply with Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required?

RECOMMENDATION: Yes. Due to the fact that Coral appears to be providing (or offering with the intent to provide) telecommunications service without a certificate, staff believes the Commission should require Coral to show cause in writing within 20 days of the issuance of the Commission's Order why it should not be fined \$25,000 per day for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The company's response must contain specific allegations of fact or law. If Coral fails to respond to the show cause, the fine will be deemed assessed. If the fine is not paid after reasonable collection efforts by the Commission, 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)

DOCKET NO. 980336-TI
DATE: March 26, 1998

STAFF ANALYSIS: Rule 25-24.470, Florida Administrative Code, states:

No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted. However, acquisition of equipment and facilities, advertising and other promotional activities may begin prior to the effective date of the certificate at the applicant's risk that it may not be granted. In any customer contacts or advertisements prior to certification, the applicant must advise the customer that certification has not and may never be granted.

On January 27, 1998, staff received information concerning a company called Coral Communications, Inc. Staff mailed a certified letter to Coral informing it of its responsibility to obtain a certificate in order to provide telecommunications service in the State of Florida. An application packet was included with the certified letter and staff requested a return date of February 23, 1998. This letter was received and signed for by Coral. On February 26, 1998, staff mailed a second certified letter to Coral. In the interim, Coral responded to staff stating it had no knowledge that its product was being marketed in Florida. In addition, Coral stated that it will not and does not process or bill any customers from Florida.

Based on the LOA staff has received and staff's observations of Coral's display at Tallahassee Mall, it appears to be in violation of Rule 25-24.470, Florida Administrative Code, by offering telecommunications service without a certificate. Moreover, the LOA has no disclaimer that the service may never be provided.

In previous dockets involving companies operating without a certificate fines and settlements have ranged up to \$40,714. Staff believes that a fine of \$25,000 per day for operating without a certificate is appropriate. Therefore, since it appears that Coral is providing telecommunications service without a certificate, staff recommends that the Commission should issue a show cause order.

DOCKET NO. 980336-TI
DATE: March 26, 1998

ISSUE 2: Should Coral Communications, Inc. be ordered to stop all billing in Florida until authorized to do so by the Commission?

RECOMMENDATION: Yes. Pursuant to Sections 364.01, 364.08, and 364.19, Florida Statutes, the Commission has jurisdiction over Coral's LOA. Therefore, staff recommends that the Commission order Coral to stop all billing in Florida until authorized to do so by the Commission and to obtain certification before the company initiates any billing of charges stemming from such LOAs in Florida. (Biegalski)

STAFF ANALYSIS: Coral's LOA appears to be deliberately deceptive, intending to encourage people to enter a drawing for \$25,000 or a four-wheel drive vehicle while the fine print states that by doing so telephone subscribers will be assessed a fee of \$7.50 per month and a set-up fee of \$2.99 whether any service is used or not.

The LOA alternately calls Coral's service a discount travel card or a discount calling card. Moreover, Coral is not authorized by the Secretary of State to conduct the drawing and no date for the drawing is specified. Therefore, staff believes the LOA is deceptive and illegal.

Even though Coral has responded that it will not and does not process or bill any customers from Florida and that one of its screening processes specifically screens out any Florida customers, staff believes Coral should be ordered to stop all billing in Florida until authorized to do so by the Commission and to obtain certification before the company initiates any billing of charges stemming from such LOAs in Florida.

ISSUE 3: Should the Commission order all certificated interexchange companies (IXCs) to discontinue providing interexchange telecommunications service to Coral Communications, Inc., pursuant to Rule 25-24.4701(3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited?

RECOMMENDATION: Yes. It appears that Coral may be operating in Florida without a certificate in violation of Rule 25-24.4701(3), Florida Administrative Code. The order should state that any IXC providing service to the company must contact the Commission at the conclusion of the show cause response period to determine if the show cause proceeding has been concluded. (Biegalski)

DOCKET NO. 980336-TI
DATE: March 26, 1998

STAFF ANALYSIS: Rule 25-24.4701 (3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited, states:

(3) The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

It appears that Coral may be operating in Florida without a certificate. Accordingly, staff recommends that the Commission order all certificated IXCs to discontinue providing intrastate long distance service for resale to this company at the conclusion of the show cause proceeding. The order should state that any IXC providing service to the company will be notified at the conclusion of the show cause proceeding.

ISSUE 4: Should the LECs be ordered not to bill for Coral until such time as each entry form has been third-party verified to the satisfaction of the Commission?

Recommendation: Yes.

Staff Analysis: Because Coral has sufficient information with each entry form to submit charges to LEC subscribers as it is doing in other states, staff believes Coral may ultimately charge Florida subscribers based on the entry forms it has already collected in Florida. Because staff believes the entry forms are deceptive and in violation of Chapter 364 and Commission rules, staff recommends that LECs be ordered not to bill any Floridians on behalf of Coral until such time as Coral has satisfied the Commission, through third-party verification, that subscribers have agreed to accept Coral's service offering.

DOCKET NO. 980336-TI
DATE: March 26, 1998

ISSUE 5: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, then Coral will have 20 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 Coral timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. The docket should also remain open to process any protest to Issues 2, 3, and 4 that may be filed within 21 days of the issuance of the Order by a person whose substantial interests are affected by the Commission's Proposed Agency Action.

Staff recommends that if Coral fails to respond to the Order to Show Cause, the fine will be deemed assessed. If the fine is not received within five business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection. If no timely protest of Issues 2, 3, and 4 is filed and Coral fails to respond to the Order to Show Cause, this docket may be closed administratively. (B. Keating)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then Coral will have 20 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 Coral timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. The docket should also remain open to process any protest to Issues 2, 3, and 4 that may be filed within 21 days of the issuance of the Order by a person whose substantial interests are affected by the Commission's Proposed Agency Action.

Staff recommends that if Coral fails to respond to the Order to Show Cause, the fine will be deemed assessed. If the fine is not received within five business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection. If no timely protest of Issues 2, 3, and 4 is filed and Coral fails to respond to the Order to Show Cause, this docket may be closed administratively.

ENTER TO WIN \$25,000

RULES

NO PURCHASE NECESSARY. To enter, complete and deposit the official L.O.A. Form to authorize Coral Communications Inc. to enroll you in the Coral Communications Calling Card Club under the terms set forth on the form. (To enter your name, address, and phone number where you can be reached on a 7"x3" card and mail to Coral Communications Inc. P.O. Box 811477, Boca Raton, FL 33487. Please 7"x3" cards must be received post marked by December 31, 1998. One entry per person or household. One winner will receive an automobile or \$25,000 dollars. Odds of winning depend on number of entries received. Games subject to full rules available at participating establishments or by sending a Self-Addressed Stamped Envelope to Coral Communications Inc. P.O. Box 811477, Boca Raton, FL 33487.

OFFICIAL L.O.A. FORM

Signature (required) _____

Name (print) _____

Address _____ Date _____

City _____ State _____ Zip _____

Home Phone (required) () () () () () () - () () () ()

Are you a homeowner renter

Combined family income: \$40,000+ less than \$40,000

Credit cards used: VISA Mastercard Discover AmEx None

Are you interested in a an obligation Cruise Florida/Bahamas Myrtle Beach Vacations

NOTICE: THIS IS A DISCOUNT TRAVEL CARD ONLY!
YOUR TELEPHONE SERVICE WILL NOT CHANGE

Discount Calling Card Agreement Terms
I would like a Coral communications Discount Travel Card sent to me at the address provided above. I authorize Coral Communications Inc. to bill all calling card usage at 25 cents/min, plus my service fee of up to 25 cents/day and a one time installation fee of \$2.99 to my home phone number listed above. International and intrastate rates may vary, and I agree to pay these billings as they appear. I understand that I will be billed through my local telephone company. I understand that I may cancel at any time by notifying Coral Communications Inc. in writing at Coral Communications Inc. P.O. Box 811477, Boca Raton, Florida, 33487.