

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against C.I.O., Inc. for apparent violation of Rule 25-24.805, F.A.C., Certificate of Public Convenience and Necessity Required, Section 364.183, F.S., Access to Company Records and Section 364.185, F.S., Investigations and Inspections; Power of Commission.

DOCKET NO. 991663-TX
ORDER NO. PSC-00-0050-SC-TX
ISSUED: January 7, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE

BY THE COMMISSION:

I. Background

In September, 1998, TeleConex, Inc. d/b/a TeleConex (TeleConex), a certificated alternative local exchange company (ALEC), entered into a marketing arrangement with CIO, Inc. (CIO). On May 9, 1999, CIO entered into a marketing agreement with Pre-Cell Solutions, Inc. (Pre-Cell), another certificated ALEC.

On May 12, 1999, our Division of Consumer Affairs received a complaint from TeleConex regarding the solicitation of its customers by CIO - a.k.a. Family Phone Services - on behalf of Pre-Cell. In June, 1999, our staff received telephone calls from TeleConex's customers who were concerned and confused regarding telephone calls and information they were provided by CIO concerning the stability of TeleConex.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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On June 24, 1999, our staff met with TeleConex to discuss the problems it was having with CIO. TeleConex stated that CIO was collecting money from customers on its behalf and not forwarding the monies to TeleConex. In addition, CIO was marketing TeleConex's customers stating that TeleConex was in bankruptcy and CIO could provide the customers with a less expensive service through Pre-Cell.

On July 27, 1999, CIO submitted its application for ALEC service in the State of Florida. On July 30, 1999, our staff mailed a letter to CIO stating that it needed to amend its corporate name, price list and the application. On September 13, 1999, our staff, having received no response from CIO to the July 30, 1999 letter, staff mailed a certified letter to CIO requesting that the amendments be made before September 28, 1999, or staff would recommend denying its application. The letter was signed for and received by CIO on September 16, 1999.

On September 21, 1999, CIO submitted a revised application, along with a request to withdraw its price list and a statement that prior to providing local service, CIO would submit a price list. On September 27, 1999, our staff requested deferral of this docket from the October 5, 1999 Agenda Conference.

On September 28, 1999, Pre-Cell terminated its marketing agreement with CIO for CIO's failure to remit monies collected from customers for telephone service to Pre-Cell. According to invoices received from customers, CIO was billing and collecting monies from customers for telecommunications services in apparent violation of Rule 25-24.805, Florida Administrative Code, Certificate of Public Convenience and Necessity. The invoices specifically requested that the payments be made directly to CIO/Family Phone Services. A sample copy of said invoices is appended to this Order as Attachment A, which by reference, is incorporated herein.

In September, 1999, Pre-Cell provided letters to its customers indicating that it had canceled its agreement with CIO and that the customers should remit payments directly to Pre-Cell. A sample copy of said letters is appended to this Order as Attachment B, which by reference, is incorporated herein. On October 6, 1999, CIO mailed letters to customers of Pre-Cell stating that Pre-Cell was a "scam" and that the monies should continue to be remitted to CIO in Palm Bay, Florida. A sample copy of said letters is appended to this Order as Attachment C, which by reference, is incorporated herein.

During that month, our staff began receiving customer complaints regarding the letters received from CIO and Pre-Cell. Additionally, our staff received information from BellSouth relating to the establishment of numerous accounts for telecommunications service in the name of CIO a.k.a. Family Phone Services. This information is appended to this Order as Attachment D, which by reference, is incorporated herein.

On October 20, 1999, our Division of Auditing and Financial Analysis provided notice to Mr. Richard Austin, president of CIO, informing him of an investigation of CIO's financial records. On November 12, 1999, our staff received an audit report stating that CIO had failed to allow audit staff access to review financial records. On November 15, 1999, all telephone numbers used by our staff to contact CIO were disconnected.

II. Apparent Violations

a. Certificate of Public Convenience and Necessity

Rule 25-24.805(1), Florida Administrative Code, provides in pertinent part:

No person shall provide alternative local exchange telecommunications service without first obtaining a certificate of public convenience and necessity from the Commission.

Our staff became aware of the operations of CIO on June 24, 1999, through its meeting with TeleConex. TeleConex informed our staff that CIO was representing itself as a telecommunications provider in its solicitation for service. At that time, our staff notified CIO that it needed to obtain a certificate. In addition, CIO stopped remitting payments for telecommunications service that were submitted directly to CIO by customers to TeleConex. Therefore, TeleConex terminated its agreement with CIO.

Further, on May 9, 1999, CIO entered into an agreement with Pre-Cell to solicit its services. CIO continued, however, to represent itself as a telecommunications provider, in addition to not paying Pre-Cell, while marketing and collecting payments for Pre-Cell. Based on the complaints our staff handled, it appeared that the customers believed that their service was provided by CIO.

After its relationship with TeleConex was terminated, but prior to the termination of the Pre-Cell agreement, CIO applied for a certificate to provide ALEC service on July 27, 1999. Prior to the approval of CIO's application, our staff received information from BellSouth regarding the installation of numerous lines and establishment of several accounts by CIO. In addition, telephone calls to the telephone number listed on customer invoices resulted in a recording which announced that CIO could provide telephone service. The recording instructed the caller to press a specified number for a list of products and services. This would lead a caller to believe that CIO was providing telecommunications service. Based on the foregoing, it appears that CIO is in violation of Rule 25-24.805(1), Florida Administrative Code.

b. Commission Access to Records

Section 364.183(1), Florida Statutes, provides in pertinent part:

The commission shall have access to all records of a telecommunications company that are reasonable and necessary for the disposition of matters within the commission's jurisdiction.

Section 364.185, Florida Statutes, provides in pertinent part:

The commission or its duly authorized representatives may during all reasonable hours enter upon any premises occupied by any telecommunications company and may set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations, and tests and exercising any power conferred by this chapter; however, the telecommunications company shall be notified of and be represented at the making of such investigations, inspections, examinations, and tests.

On October 20, 1999, our staff notified Mr. Richard Austin of the intent to conduct an audit of CIO's books and records. On October 26, 1999, our staff called Mr. Austin and scheduled an audit for October 29, 1999. On the evening of October 28, 1999, Mr. Austin contacted our staff and canceled the audit. On October 29, 1999, our staff mailed a certified letter to Mr. Austin requesting that he respond with an acceptable time and date for staff to conduct the audit. Mr. Austin received the letter on

November 1, 1999, but to date, our staff has not received a response. Based on the foregoing, it appears that CIO is in violation of Sections 364.183(1) and 364.185, Florida Statutes.

III. Conclusion

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

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 CIO's conduct at issue here, would meet the standard for a "willful violation." We find that CIO's conduct in acting as an ALEC without a certificate of public convenience and necessity, in apparent violation of Commission Rule 25-24.805, Florida Administrative Code, has been "willful" in the sense intended by Section 364.285, Florida Statutes. We also find that CIO's lack of cooperation with our staff concerning the requested audit, in apparent violation of Sections 364.183(1) and 364.185, Florida Statutes, is "willful" in the sense intended by Section 364.285, Florida Statutes.

Accordingly, CIO shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.805, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. CIO shall also show cause in writing within 21 days of the issuance of this Order why it should not be fined \$25,000 for apparent violation of Section 364.183, Florida Statutes, Access to company records, and Section 364.185, Florida Statutes, Investigations and inspections; power of commission.

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If CIO timely responds to this Order, this docket shall remain open pending the resolution of the show cause proceeding. CIO's response shall contain specific allegations of fact or law. If CIO fails to respond to this Order to Show Cause, the fines shall be deemed assessed. If the fines are not paid within ten business days after this Order becomes final, the fines shall be forwarded to the Office of the Comptroller for collection, and this docket shall be closed administratively.

Any fines received by the Commission shall be forwarded to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that CIO, Inc. shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.805, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. It is further

ORDERED that CIO, Inc. shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$25,000 for apparent violation of Section 364.183, Florida Statutes, Access to company records, and Section 364.185, Florida Statutes, Investigations and inspections; power of commission. It is further

ORDERED that any response to this Order to Show Cause filed by CIO, Inc. shall contain specific allegations of fact or law and shall identify the company name and this docket number. It is further

ORDERED that failure by CIO, Inc. to respond to this Order to Show Cause in the manner and date set forth in the "Notice of Further Proceedings and Judicial Review" section of this Order shall constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and the fines shall be deemed assessed. It is further

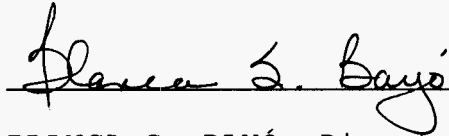
ORDERED that in the event CIO, Inc. fails to respond to this Order and the fines are not paid within ten business days after this Order becomes final, the fines shall be forwarded to the Office of the Comptroller for collection. It is further

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ORDERED that any fines received by the Commission shall be forwarded to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. It is further

ORDERED that upon payment of the fines or referral to the Comptroller's Office, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of January, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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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This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 28, 2000.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

ATTACHMENT A

Pre-cell/Family Phone Services

Tel: 1-877-205-2417
Fax: 1-877-205-8803

CIO Family Phone Services
2350 Commerce Park Dr. Suite #3
Palm Bay, FL 32905

Customer Number: 146
Service Phone Number: (407) 290-5628

Phone Service Package: Family Fun Package

Payment Due Date: 11/05/1999

JACQUELINE LAWRENCE
3816 MAGNOLIA LAKE LN

ORLANDO, FL 32810

If payment is not RECEIVED at our office
for credits before 5 p.m. eastern time on

11/10/1999

your phone service shall be disconnected
and an additional \$25.00 fee will be
required before reconnecting your phone
service. Please mail your payment
promptly to avoid this inconvenience and
additional charge.

Itemized Charges for Next Billing Period:

Phone Service Base Fee: \$51.33

FCC Approved Line Fee: \$ 3.50

FL Telecom. Relay Service: \$ 0.12

Pre-Call Long Distance Access Fee: \$0.00 ✓

Pre-Call non-Published Service fee: \$0.00 ✓

Subtotal: \$54.95

911 Service Fee: \$ 0.50

Federal Excise Tax (3.0%): \$1.54

Gross Receipts Tax (2.5%): \$1.28

State and Local Taxes: \$6.42

Previous Balance: \$0.00

Note: If the Previous Balance is within parenthesis, i.e. (23.25),
then it reflects a previous balance due.

Total Amount Due: \$64.89

**When sending payment, you MUST INCLUDE your telephone number or
customer number ON THE CHECK.**

Your prompt payment is appreciated.

Make Check or Money Order Payable to: CIO Family Phone Services
2350 Commerce Park Dr. N.E. Suite #3
Palm Bay, FL 32905

For BILLING inquiries please call 1-877-205-2417 ext. 5
To report REPAIR problems, call 1-877-205-2417 ext. 6

Please be advised:
The customer is responsible for ALL CHARGES incurred
by use of phone features not specifically included with the
subscribed service, i.e. directory assistance.

.....
Tear off bottom and submit with your payment, keep the top portion for your records.

Customer Number: 146
Service Phone Number: (407) 290-5628
Total Amount Due: \$ 64.89
Payment Due Date: 11/05/1999

Make Check or Money Order Payable to: CIO Family Phone Services
2350 Commerce Park Dr. N.E. Suite #3
Palm Bay, FL 32905

ATTACHMENT B



PRE-CELL

FAMILY PHONE

255 East Drive, Suite C., Melbourne, FL (407)728-7374 FAX (407) 729-8484

Dear Valued Customer:

We are no longer working with the company that was collecting our payments.

Please make sure all payments are made.

By money order to:

PRECELL / FAMILY PHONE
255 East Drive, Suite C
Melbourne, FL 32904

OR

To Western Union. You can call 1-800-325-6000 to find the payment center nearest to you. The code is "Family Phone".

We will be sending you a bill in the next few days for October. If you have paid us at the above address, thank you and your November bill will reflect that payment. If you have paid CIO you must send us a copy of that payment, either cancelled check, money order receipt or credit card receipt, along with a copy of CIO's bill.

THIS IS VERY IMPORTANT. WE CAN NOT GUARANTEE THAT YOU WILL RECEIVE CREDIT IF YOU PAY THE OLD COMPANY OR MAKE A PAYMENT TO ANY OTHER PAYMENT CENTER THAN THOSE LISTED HERE. PLEASE CALL AT YOUR EARLIEST CONVENIENCE SHOULD YOU HAVE ANY QUESTIONS. WE HAVE ENCLOSED A COPY OF OUR PUBLIC UTILITY COMMISSION LICENSE TO CONFIRM TO YOU OUR LICENSE.

PRECELL / FAMILY PHONE GENERAL PRICING: (Does not include taxes)

Basic Plan w/ call waiting	\$ 44.95
Basic Plan w/ Call Waiting & LD access	\$ 49.95
Family Fun Package Complete	\$ 54.95

We look forward to serving you and we apologize for any inconvenience this may have caused.

Sincerely,

Thomas E. Biddix
CEO

ATTACHMENT C



G.I.O./FAMILY PHONE SERVICES
FROM THE DESK OF RHONDA BURNSTEIN WOLF

October 6, 1999

ATTN: ALL C.I.O., INC/FAMILY PHONE SERVICE CUSTOMERS

~~BEWARE~~.. IT HAS COME TO OUR ATTENTION THAT THERE IS
A SCAM TAKING PLACE, OUR CUSTOMERS ARE BEING ASKED TO
SEND THEIR PAYMENTS TO A BOGUS LOCATION. IF YOU
SHOULD HAVE THIS HAPPEN TO YOU OR HAVE ANY QUESTIONS
PLEASE CALL US IMMEDIATELY AT 1-877-205-2417. PAYMENTS
FOR FAMILY PHONE SERVICES ARE STILL TO BE MAILED TO:

2350 COMMERCE PARK DR. NE

SUITE 3

PALM BAY, FL 32909

1-877-205-2417

UNTILL FURTHER NOTICE WE ARE NO LONGER USING WESTERN
UNION, SO PLEASE CALL US IF YOU NEED ANY INFORMATION
REGARDING LOCATIONS FOR OUR PAY AGENT.

THANK YOU.

RHONDA BURNSTEIN WOLF

RHONDA BURNSTEIN WOLF
GENERAL MANAGER

2350 COMMERCE PARK DR. N.E.
SUITE 3
PALM BAY, FLORIDA 32905

PHONE 1-877-205-2417
FAX 1-877-202-8603
C.I.O.@BELLSOUTH.COM

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CIO	INC	IBA	FAMILY	AMT	DUE	1332.69			
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0927	DMAT	NEW SVC IN SE	561 489-0137	016	SHAK	0N7C8KC Disc	***	SQ20JRC1	
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0927	DMAT	NEW SVC IN NF	407 757-9633	774	SHAK	0N8TNGLD	***	SQ20JRC1	
0927	DMAT	NEW SVC IN NF	904 220-7400	412	SHAK	0N8M19K Disc	***	SQ20JRC1	
0927	TEMP	CPNI ANSWERED	QUESTIONS ABOUT ACCOUNT				***	BYTFLF	
0927	DMAT	NEW SVC IN NF	407 259-7277	513	SHAK	0N1XQPD	***	SQ20JRC1	
0927	DMAT	NEW SVC IN NF	904 721-3666	758	SHAK	0N288WB Disc	***	SQ20JRC1	
0927	DMAT	NEW SVC IN NF	407 433-0202	205	SHAK	0N34GEB D	***	SQ20JRC1	
0927	DMAT	NEW SVC IN NF	904 317-7444	251	SHAK	0N88923 Disc	***	SQ20JRC1	
0927	TEMP	CPNI ANSWERED	QUESTIONS ABOUT ACCOUNT				***	FIFFLQ8	
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0927	TEMP	CPNI ANSWERED	QUESTIONS ABOUT ACCOUNT				***	BFSZRX	
0924	SIC	CI CIV					***	BYTQTP	
0924	ONI	RICHARD ADD RONDA & SHERRIE NAME TO CREDIT INFO						BYTQTP	

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1004	IRAT	NEW	SVC	IN	NF	904	317-8386	484	SHAK	#N6W882	D	*** SQ20JRC1
1001	IRAT	NEW	SVC	IN	NF	904	781-8916	720	SHAK	#N6R888	D	*** SQ20JRC1
1001	IRAT	NEW	SVC	IN	NF	407	956-8445	286	SHAK	#N4QC82	D	*** SQ20JRC1
1001	IRAT	NEW	SVC	IN	NF	904	743-7344	334	SHAK	#N48694	D	*** SQ20JRC1
1001	IRAT	NEW	SVC	IN	NF	407	984-2206	336	SHAK	#N626JF	D	*** SQ20JRC1
1001	IRAT	NEW	SVC	IN	NF	904	908-9355	390	SHAK	#N64167	D	*** SQ20JRC1

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ATTACHMENT D (page 5 of 5)

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CIO INC DBA FAMILY PB 031 STA TAX MORN CC B MCCO C3148
 PHONE SERVICES CIO RA RIA TAN 036702 TBE 9 0752 DOI 051099
 2350 COMMERCE PK DR RB N23 NT AVT 85 DEP -00
 NE-SUIT 3 PPD CCR AMT DUE 1332.69
 MELB FL 32905 CI C P-RICHARD AUSTIN B4077331459NBS TXID 59-3538555 P98
 000088757 OK TO SPK WITH RICHARD BERSTEIN, SHERRI & RICHARD MOSS *CIV 0999
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1006	DIAT	NEW	SVC	IN	NF	904	475-0034	150	SHAK	#N1274HT	***	SQ20JRC1
1006	DIAT	NEW	SVC	IN	SE	561	464-8415	283	SHAK	#N7YJ56D	***	SQ20MFS1
1006	DIAT	NEW	SVC	IN	NF	407	953-2171	005	SHAK	#N59RF3D	***	SQ20JRC1
1006	DIAT	NEW	SVC	IN	NF	904	722-0806	685	SHAK	#N0812DD	***	SQ20JRC1
1006	DIAT	NEW	SVC	IN	NF	904	766-0888	303	SHAK	#N324RTD	***	SQ20JRC1
1006	DIAT	NEW	SVC	IN	NF	407	952-5792	582	SHAK	#N2GBYR	***	SQ20JRC1

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