

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Accutel Communications, Inc. for Unlawful Billing Practices in violation of Section 364.10(1) and Section 364.604(2), F.S., and Insufficient Management Capability pursuant to Section 364.337(3), F.S.

DOCKET NO. 981488-TI
ORDER NO. PSC-00-1149-FOF-TI
ISSUED: June 23, 2000

The following Commissioners participated in the disposition of this matter:

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

ORDER GRANTING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Accutel Communications, Inc. (Accutel) was granted certificate number 4854 on May 13, 1997, to provide intrastate interexchange telecommunications service. As a certificated telecommunications company, Accutel is subject to the regulations of this Commission.

From September 30, 1997, through May 6, 1999, our Division of Consumer Affairs has received 171 consumer complaints against Accutel. These complaints were closed as unauthorized charges (cramming) in apparent violation of Sections 364.10 (1) and 364.604 (2), Florida Statutes. Accutel has offered no explanation as to the genesis and nature of the \$4.95 charge that appears on the customers' telephone bills as a service rendered by Accutel. Accutel, however, has provided refunds or credits in the amount of \$2,440.81 for 155 of the 171 apparent cramming violations. Based on the apparent violations, by Order No. PSC-99-1619-SC-TI, issued August 18, 1999, we ordered Accutel to show cause why it should not be fined in the amount of \$10,000 per infraction, for a total of \$1,710,000, or have its certificate canceled for its apparent violations of Sections 364.10(1) and 364.604(2), Florida Statutes,

DOCUMENT NUMBER-DATE

07663 JUN 23 8

FPSC-RECORDS/REPORTING

ORDER NO. PSC-00-1149-FOF-TI
DOCKET NO. 981488-TI
PAGE 2

Unlawful Billing Practices, and for Insufficient Management Capability, pursuant to Section 364.337(3), Florida Statutes. On September 8, 1999, Accutel responded to the Show Cause Order and this matter was set for an administrative hearing.

By Order No. PSC-99-2496-PCO-TI, issued September 20, 1999, the procedure for this docket was outlined, and the hearing and prehearing dates were established. Accutel failed to comply with this Order and did not appear at the March 23, 2000 prehearing conference. Based on Accutel's non-appearance at the scheduled Prehearing, on April 20, 2000, Order No. PSC-00-0776-FOF-TI issued, Dismissing Accutel's Response to Order to Show Cause and Imposing Fine for Violating Statutes.

On May 5, 2000, Accutel filed a Motion for Reconsideration, alleging that its failure to participate was a result of counsel of record not being noticed on each of the scheduled events in this docket and not being provided with a copy of the recommendation upon which the Order Dismissing Accutel's Response to Order to Show Cause and Imposing Fine for Violating Statutes was based. It is that Motion which we now address.

The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974). (emphasis added)

Our staff reports that, based on telephone conversations with counsel for Accutel and the fact that Accutel did file its Prehearing Statement consistent with the Order Establishing Procedure, it appears that counsel was aware of all proceedings in this docket. A review of the docket filings in our Division of Records and Recording, however, disclosed that only Accutel's Corporate Representative had been noticed on all docket filings,

ORDER NO. PSC-00-1149-FOF-TI
DOCKET NO. 981488-TI
PAGE 3

and not counsel for Accutel. We note that counsel for Accutel failed to file a Notice of Appearance in this Docket, and did not request that they be provided with copies of all filings. The filing of its Response to Order to Show Cause, however, will be considered adequate to establish counsel's position as attorney of record and, therefore, entitled to receive copies of all filings in this docket. Accutel has, therefore, articulated an arguable justification for its lack of due diligence in complying with our procedural Order.

Upon consideration, therefore, in the spirit of fairness, Accutel's Motion for Reconsideration will be granted and its Response to Order to Show Cause reinstated. This docket will then be in the same posture as when Accutel first filed its Response to Order to Show Cause. Accordingly it will be given a new Hearing date and a revised Order Establishing Procedure will be issued.

Based on the forgoing, it is

ORDERED by the Florida Public Service Commission that Accutel Communications, Inc.'s Motion for Reconsideration is granted and its Response to Order to Show Cause reinstated, as discussed in the body of this Order. It is further

ORDERED that a revised Order Establishing Procedure be issued, setting forth new controlling dates for the processing of this Docket.

By ORDER of the Florida Public Service Commission this 23rd day of June, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

CLF

ORDER NO. PSC-00-1149-FOF-TI
DOCKET NO. 981488-TI
PAGE 4

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.