



Public Service Commission

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RECORDS AND REPORTING

DATE: JUNE 18, 1998

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

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *NCB for BK*
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (DRAPER)
DIVISION OF COMMUNICATIONS (BIEGALSKI) *US w/DA/RA*

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

DOCKET NO. 980491-TI - APPLICATION FOR CERTIFICATE TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICE BY CORAL COMMUNICATIONS, INC.

AGENDA: 06/30/98 - REGULAR AGENDA - ISSUE 1 - SHOW CAUSE - ISSUE 2 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\980336.RCM

CASE BACKGROUND

On April 23, 1998, by Order No. PSC-98-0573-SC-TI, in Docket Number 980336-TI, the Commission ordered Coral Communications, Inc. (Coral) to show cause in writing within 20 days of the effective date of the Order why it should not be fined \$25,000 per day for its apparent violations of Rule 25-24.470, Florida Administrative Code. On May 7, 1998, Coral filed a settlement offer as resolution to this docket. (Attachment A, Page 6) In addition, on April 6, 1998, Coral filed an application for certification as an interexchange telecommunications company.

DOCUMENT NUMBER DATE

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FPSC-RECORDS/REPORTING

Since Coral filed its application for certification, staff has learned that the principals of Coral were formerly involved with Intercontinental Communications, Inc. d/b/a ICLD as an agent under the name of Telecommunications Marketing, Inc. ICLD is currently under investigation for apparent unauthorized carrier changes submitted by Telecommunications Marketing, Inc. In addition, staff has learned that numerous other states are also investigating Coral. Based on this information, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Coral Communications, Inc. to resolve the apparent violations of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity?

RECOMMENDATION: No. The Commission should not accept the settlement offer proposed by Coral. (Biegalski)

STAFF ANALYSIS: On May 7, 1998, Coral sent staff its proposed settlement offer. In its settlement offer Coral agreed to do the following:

- Coral will refund any Florida customer complaints.
- Coral will make sure all marketing materials are withdrawn from Florida.
- Coral will pay a \$10,000 penalty for operating in Florida without a certificate.

Staff supports Coral's proposal to make refunds to Florida consumers. Coral had previously represented to staff that 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. Thereafter, Coral has stated in its settlement offer that it has made refunds to consumers in Florida in the amount of \$32, 688.37. Therefore, it must have been billing in the State of Florida. Staff believes that Florida consumers should not be responsible for charges they did not authorize. Staff also supports Coral's proposal to withdraw all

marketing materials from Florida. However, because Coral was operating and billing customers in the State of Florida for telecommunications service without a certificate, and because of the deceptive nature of the marketing activities of Coral, staff cannot support Coral's settlement proposal in its entirety. Staff believes the monetary settlement is inadequate for the harm to Florida consumers.

Moreover, staff is aware of investigations into the deceptive marketing practices of Coral in other states, and of the history of Coral's president, Michael Tinari, with sweepstakes LOAs. Therefore, staff does not recommend accepting the settlement offer proposed by Coral.

ISSUE 2: Should the Commission deny Coral Communications, Inc.'s application for a certificate to provide interexchange telecommunications service in Florida?

RECOMMENDATION: Yes. Coral does not appear to have the managerial capability as required in Section 364.337(3), Florida Statutes. Therefore, the application should be denied. (Biegalski)

STAFF ANALYSIS: 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. Coral filed its application for certification on April 6, 1998.

Section 364.337, Florida Statutes, states in part:

(3) The commission shall grant a certificate of authority to provide intrastate interexchange telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

Based on staff's review of the management involved with Coral, it does not appear that Coral has the managerial capability to run a company in the public interest.

Rule 25-24.471, Florida Administrative Code, states in part:

(3) A certificate will be granted if the Commission determines that such approval is in the public interest.

Staff has investigated the management of Coral and the company itself. Coral has pending investigations in numerous other states, and just entered into a consent injunction and judgment with the Attorney General's Office in Missouri. (Attachment B, Pages 7-15)

In addition, Mr. Michael Tinari, President of Coral, was formerly President of Telecommunications Marketing, Inc (TMI). This company was an agent for Intercontinental Communications Group, Inc. d/b/a ICLD (ICLD). ICLD is currently under investigation for numerous apparent unauthorized carrier change complaints. During numerous conversations with ICLD, it appears to staff that the complaints stem from forged LOAs marketed through sweepstakes submitted by TMI. Considering the managerial operations of TMI, it does not appear that Coral has the managerial capability needed to operate a certificated telecommunications provider in compliance with Florida law and the Commission's rules and orders. Therefore, it is staff's recommendation that the application be denied.

DATE: June 18, 1998

ISSUE 3: Should these dockets be closed?

RECOMMENDATION: ~~X~~. If staff's recommendation in Issue 1 is approved, Docket No. 980336-TI should remain open pending the resolution of the show cause proceeding. Coral must respond to the original show cause order within 10 days of the issuance of this Order denying the settlement. If Coral fails to respond to the Show Cause Order, the fine should be deemed assessed. If Coral fails to respond to the Order to Show Cause, and the fines are not received within 5 business days after the expiration of the show cause response period, this docket should be closed administratively. After reasonable collection efforts, the fine should be forwarded to the Comptroller's Office for collection.

If staff's recommendation in Issue 2 is approved, Docket No. 980491-TI should remain open pending the processing of any protest to Issue 2 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. If no protest is filed, the Order will become final, and this docket should be closed. (B. Keating)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, Docket No. 980336-TI should remain open pending the resolution of the show cause proceeding. Coral must respond to the original show cause order within 10 days of the issuance of this Order denying the settlement. If Coral fails to respond to the Show Cause Order, the fine should be deemed assessed. If Coral fails to respond to the Order to Show Cause, and the fines are not received within 5 business days after the expiration of the show cause response period, this docket should be closed administratively. After reasonable collection efforts, the fine should be forwarded to the Comptroller's Office for collection.

If staff's recommendation in Issue 2 is approved, Docket No. 980491-TI should remain open pending the processing of any protest to Issue 2 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. If no protest is filed, the Order will become final, and this docket should be closed.

DEVON A. PORCELLA, ESQUIRE
CORPORATE COUNSEL
751 PARK OF COMMERCE DR. SUITE 120
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TELEPHONE: (561) 241-0348

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FACSIMILE: (561) 998-9640

May 7, 1998

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

To Whom It May Concern:

Coral Communications would like to propose the following settlement offer as final disposition of the Show Cause Proceedings filed against Coral Communications, Docket No. 980336-TI:

- 1) Coral has refunded \$32,688.37 to Florida consumers and will continue to refund any Florida customer complaints.
- 2) Coral will make sure that all marketing materials are withdrawn from Florida.
- 3) Coral will pay a \$10,000 penalty for operating in Florida without its Certificate of Public Convenience and Necessity.

In addition, I have included a cease and desist letter that I sent to our agent who was marketing in Florida. As you can see, the agent should not have been marketing in Florida as per his contract. To my knowledge, since notification to this agent, all marketing in Florida has stopped.

As of April 4, 1998 Coral Communications ceased billing in Florida. In fact, we had screens in our system which were supposed to block any Florida billing, but the system failed. We have since found the problem and have the appropriate screens working.

I would also like to note that Coral filed its application for its tariff in Florida on April 3, 1998, Docket # 980491-TI.

Please contact me as soon as possible about this settlement offer so that I may have sufficient time to respond to the Rule to Show Cause, should we not resolve this matter through a settlement.

Very truly yours,


Devon A. Porcella

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS,
STATE OF MISSOURI

STATE OF MISSOURI, ex rel.)
JEREMIAH W. (JAY) NIXON,)
Attorney General,)
)
Plaintiff,)
)
v.)
)
CORAL COMMUNICATIONS, INC.,)
a Florida Corporation, et al.,)
)
Defendants.)

Case No. 98CC-000716
Division No. 39

CONSENT INJUNCTION AND JUDGMENT
AS TO DEFENDANTS CORAL COMMUNICATIONS, INC.
AND MICHAEL TINARI

It has been stipulated by and between Plaintiff, State of Missouri, at the relation of Attorney General Jeremiah W. (Jay) Nixon, and Defendants Coral Communications, Inc. ("Coral") and Michael Tinari ("Tinari"), that they have agreed to settle the claims raised against Coral and Tinari in Plaintiff's petition, as currently amended, and based on information and advice of the parties, the Court hereby Concludes, Adjudges and Decrees, as follows:

I. GENERAL

1. Jurisdiction. This Court has jurisdiction over the parties and the subject matter of this Consent Injunction and Judgment ("CIJ"). The Court has the power to enter this CIJ and does so with the consent of the parties.

2. Suit. The Attorney General has filed this action against Coral and Tinari, and others, in St. Louis County Circuit Court, Cause No. 98CC-000716 (the "Action"), alleging,

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among other things, that Coral and Tinari violated certain provisions of Chapter 407, RSMo 1994.

3. Settlement. The Attorney General and Coral and Tinari have determined that it is in their mutual interest to resolve the claims raised against Coral and Tinari in the Action through entry of this CU and thus avoid the expense and inconvenience of litigation. Nothing contained herein shall constitute an admission of liability on the part of Coral or Tinari.

4. Severability. If any provision or provisions of this CU is or are declared invalid by a court of competent jurisdiction, the remainder of the CU shall remain in full force and effect and shall not be affected by such declaration.

5. Non-Approval. Coral and Tinari shall not represent to any person, natural or otherwise, that the Attorney General, by entry of this CU, sanctions, endorses or approves of any methods, acts, uses, practices or solicitations undertaken by or on behalf of Coral and Tinari at any time.

6. Fair and Adequate Settlement. Having read and understood the terms and conditions of this CU, the parties and the Court agree that the CU constitutes a fair, just and adequate resolution of all of the Attorney General's claims against Coral and Tinari set forth in the Action.

7. Recommendation. The Attorney General and Coral and Tinari each recommend and agree that the Court enter this CU.

II. DEFINITIONS

8. Advertisement, including the terms "advertise" and "advertising," shall mean the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in real estate.

9. Coral means Defendant Coral Communications, Inc. and shall include any of its officers, directors, agents, employees, representatives, attorneys, predecessors, successors, assigns, trustees, subsidiaries, or parent or other related corporations.

10. Tinari means Defendant Michael Tinari and shall include any of his agents, employees, representatives, attorneys, predecessors, successors, and assigns.

11. Person shall mean any natural person or his legal representative, partnership, firm, for profit or not for profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.

12. Sale, including the terms "sell" and "selling," shall mean any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit.

III. INJUNCTION

13. Coral and Tinari are hereby forever enjoined from, either directly or indirectly, advertising, offering to sell and selling telecommunications services, and/or engaging in or promoting any sweepstakes, prize promotion or contest in the State of Missouri.

IV. JUDGMENT AND PAYMENT PROVISIONS

14. The Court hereby orders, and Coral and Tinari hereby consents to, the entry of judgment against Coral and Tinari, jointly and severally, in the Action and in favor of the Attorney General in the amount of Forty-Five Thousand and No/100 Dollars (\$45,000.00). Payment shall be made by wire transfer, cashier's check or money order, as specified by the Attorney General.

15. In satisfaction of this judgment, Coral and/or Tinari shall make three (3) payments to the Missouri Merchandising Practices Revolving Fund on the following payment schedule:

- a. On or before May 22, 1998, the Attorney General shall receive and Coral and/or Tinari shall make a Fifteen Thousand (\$15,000.00) payment to the Missouri Merchandising Practices Revolving Fund; and,
- b. On or before June 5, 1998, the Attorney General shall receive and Coral and/or Tinari shall make a Fifteen Thousand (\$15,000.00) payment to the Missouri Merchandising Practices Revolving Fund; and,
- c. On or before June 19, 1998, the Attorney General shall receive and Coral and/or Tinari shall make a Fifteen Thousand (\$15,000.00) payment to the Missouri Merchandising Practices Revolving Fund.

16. All installments referenced in paragraph 15 remaining unpaid on the failure to pay, when due, any installment, shall become immediately due and payable without notice or demand.

17. Defendants are jointly and severally liable for all obligations referenced in this Judgment.

18. In the event Coral and/or Tinari elect to engage in, either directly or indirectly, the advertising, offering to sell and selling of telecommunications services, and/or engage in or promote, either directly or indirectly, any sweepstakes, prize promotion or contest in the State of Missouri, Coral and/or Tinari shall:

a. remit a lump sum payment of \$50,000.00 (Fifty Thousand and No/100 Dollars) to the Missouri Merchandising Practices Revolving Fund, or such other fund as may be designated by the Attorney General;

b. notify the Attorney General, in writing, of their intent to do business in Missouri and forward such notice with copies of articles of incorporation, documents reflecting Defendants' Missouri registered agent, licenses to do business in the State of Missouri, tariffs, certificate of interexchange authority and/or other certificates issued by the Missouri Public Service Commission and/or other licenses or grants to do business in the State of Missouri; and,

c. must furnish the Attorney General with satisfactory proof of the posting of a surety bond or an irrevocable letter of credit as defined in §400.5-105, RSMo 1994, issued by any state or federal financial institution, in the sum of \$1,000,000.00 (One Million Dollars) for each year in which the Coral and/or Tinari do business. The bond shall be conditioned upon Coral's and/or Tinari's compliance with the Missouri Merchandising Practices Act, and the bond shall be indemnity for any loss sustained by any person as well as for any other relief available to such person and/or the State of Missouri under the Act by reason of the conduct or omissions of Coral and/or Tinari when such conduct or omissions are found to be a violation of the Act. The proceeds of the bond or irrevocable letter of credit shall be paid upon receipt by the Attorney

General of a final judgment from a Missouri court of competent jurisdiction against Coral and/or Tinari and in favor of an aggrieved party and/or the State of Missouri.

V. RESTITUTION

19. Coral and/or Tinari shall reimburse and/or credit all Missouri consumers who have notified any State entity including, but not limited to, the Attorney General's Office and the Missouri Public Service Commission, their local exchange carriers or long distance carriers, the Better Business Bureau, the Federal Communications Commission, Coral or Tinari, that charges for Coral's services were unauthorized or unwanted, were based upon misrepresentation, deception, concealment, suppression, omission, fraud, a deceptive format, false promises, half-truths, unfair practices, illegal conduct, or were unsolicited merchandise or services.

(1) Coral and/or Tinari shall pay all service charges associated with the billing for Coral's services, if any, and,

(2) Coral and/or Tinari shall refund or credit the consumer for the cost of Coral's services.

20. In the event that Coral and/or Tinari determines a refund and/or credit is not appropriate, Coral and/or Tinari shall notify the consumer and the Attorney General of the denial of a refund and/or credit and its reason for the denial.

21. Within one (1) month of execution of this CU and monthly thereafter until the restitution process is completed, Coral and/or Tinari shall provide the Attorney General with the number of Missouri consumers who requested a refund, each consumer's name and address, the amount of each consumer's individual refund, and the total amount of refunds provided.

V. MISCELLANEOUS

22. Nothing in this CIJ shall be deemed to permit or authorize any violation of the laws of the State of Missouri or otherwise be construed to relieve Coral and/or Tinari of any duty to comply with the applicable laws, rules and regulations of the State of Missouri, nor shall anything herein be deemed to constitute permission to engage in any acts or practices prohibited by the laws, rules or regulations of the State of Missouri including 407.020 RSMo 1994. All stipulated remedies herein are cumulative to those that are permitted by the laws, rules or regulations of the State of Missouri including 407.020 RSMo 1994.

23. CIJ Violations. A violation of any of the terms or conditions of this Consent Injunction and Judgment, including respondent's failure to pay restitution or failure to comply with the payment provisions, from this date forward shall constitute a violation for which civil penalties of not more than Five Thousand and No/100 Dollars (\$5,000.00) per said violation of this Consent Injunction and Judgment may be sought against Coral and/or Tinari by the Attorney General pursuant to Section 407.110 RSMo 1994.

24. If Coral and/or Tinari have misrepresented any fact in connection with this CIJ, such misrepresentation shall be considered a violation and breach of the CIJ and Chapter 407, RSMo 1994.

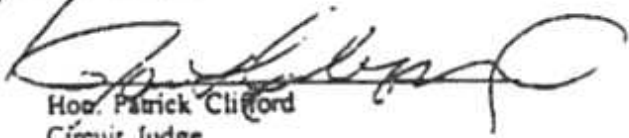
25. Notice. Coral and/or Tinari will provide a copy of this CIJ to all present and future employees, independent contractors, agents, successors and assigns.

26. Removal of Promotions. Coral and/or Tinari shall remove any and all promotions, including, but not limited to, box programs, advertisements, sweepstakes forms, conducted by or on behalf of Coral and/or Tinari that are enjoined by this CIJ within thirty (30) days of the date

of entry of this CU. Thereafter, upon notice by any agent of the Office of the Attorney General, Coral and/or Tinari shall remove any and all promotions, including, but not limited to, box programs, advertisements, sweepstakes forms, conducted by or on behalf of Coral and/or Tinari that are enjoined by this CU within seven (7) days. Notice to Coral's and/or Tinari's counsel shall constitute notice to Coral and/or Tinari for purposes of this paragraph. Every failure by Coral and/or Tinari to remove such noticed promotions shall constitute a violation and breach of the CU.

27. Costs. All costs of Court expended or incurred in this cause are hereby adjudged against Coral and/or Tinari, jointly and severally.

SO ORDERED this 19 day of May, 1998.



Hon. Patrick Clifford
Circuit Judge

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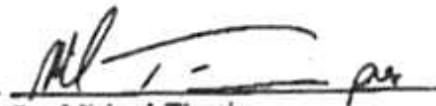
The undersigned parties have stipulated and consented to the entry of this Consent Injunction and Judgment.

JEREMIAH W. (JAY) NIXON
Attorney General

CORAL COMMUNICATIONS, INC.

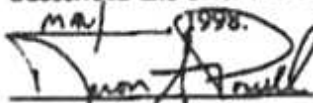


Lorena Merklin von Kaenel, #42035
Assistant Attorney General
Wainwright State Office Building
111 North 7th Street, Suite 204
St. Louis, MO 63101
(314) 340-6816



By: Michael Tinari
Title: President

Subscribed and sworn to before me this 14 day of

MAY 1998.

Notary Public
My commission Expires:

4/19/2002

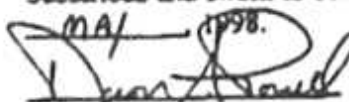


Devon A. Porcillo
MY COMMISSION # CCT35130 EXPIRES
April 19, 2002
BONDED THRU TROY FARM INSURANCE, INC.

MICHAEL TINARI


By: Michael Tinari

Subscribed and sworn to before me this 14 day of

MAY 1998.

Notary Public
My commission Expires:

4/19/2002



Devon A. Porcillo
MY COMMISSION # CCT35130 EXPIRES
April 19, 2002
BONDED THRU TROY FARM INSURANCE, INC.