

**Public Service Commission**CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850**-M-E-M-O-R-A-N-D-U-M-**RECEIVED FPSC
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RECORDS AND REPORTING

DATE: March 22, 2001

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

FROM: DIVISION OF LEGAL SERVICES (FUDGE) *ff*
DIVISION OF COMPETITIVE SERVICES (C. LEWIS) *CKL. [signature]*

RE: DOCKET NO. 001353-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST LABREE MANAGEMENT, INC. FOR APPARENT VIOLATION OF RULE 25-24.640(1)(f), F.A.C., SERVICE REQUIREMENTS FOR CALL AGGREGATORS.

AGENDA: 04/03/00 - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001353.RCM

CASE BACKGROUND

- 4/13/00 - The Commission issued Order No. PSC-00-0695-PAA-TP, in Docket No. 971659-TP, which provides that Labree Management, Inc. (Labree) should be classified as a call aggregator pursuant to Rule 25-24.610 (1)(a), Florida Administrative Code, Terms and Definitions; Rules Incorporated.
- 5/9/00 - The Commission issued Consummating Order No. PSC-00-0921-CO-TP, which finalized Order No. PSC-00-0695-PAA-TP and closed Docket No. 971659-TP.
- 5/15/00 - Staff mailed correspondence to Labree notifying it of the results of staff's May 2, 2000, call aggregator inspection of Unit 1303 and inquiring about other matters regarding the Parc Corniche Resort. A response was due from the company no later than June 12, 2000.

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- 6/19/00 - Staff sent a certified letter to Labree reminding it that a response was required after receiving no response to the May 15, 2000, correspondence.
- 7/7/00 - Staff received correspondence from Labree's Counsel acknowledging that Labree Management, Inc. is providing call aggregator services to the public.
- 9/7/00 - A Commission staff engineer conducted a follow-up call aggregator inspection of Unit 1106 at the Parc Corniche Resort. Violations were still present.
- 9/12/00 - Staff opened this docket to initiate show cause proceedings against Labree Management, Inc. for apparent violations of Rule 25-24.640(1)(f), Florida Administrative Code, Service Requirements for Call Aggregators.
- 10/26/00 - Staff filed a recommendation in this docket for the November 7, 2000 Agenda Conference.
- 11/7/00 - This docket was deferred from the Agenda Conference by the Chairman at the request of Labree. Apparently the management of Parc Corniche Resort was transferred from Labree Management, Inc. to Emerson Communications and a request was made for additional time to seek a resolution of this proceeding with staff.
- 02/15/01 - The complainant informed staff that he is no longer a resident at Parc Corniche Resort and that his condo, (Unit 1303), is presently being rented out to transient customers. The complaint that initiated staff's investigation no longer exists.
- 02/20/01 - A Commission staff engineer conducted a follow-up call aggregator inspection of Unit 1205 at the Parc Corniche Resort and the requirements of Rule 25-24-640(1)(f), Florida Administrative Code, were fulfilled satisfactorily.
- The Commission has jurisdiction pursuant to Section 364.285, 364.3376 Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Labree Management, Inc. to show cause why it should not be fined \$3,000 for apparent violations of Rule 25-24.640(1)(f), Florida Administrative Code, Service Requirements for Call Aggregators?

RECOMMENDATION: No. The Commission should not order Labree Management, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$3,000 for apparent violations of Rule 25-24.640(1)(f), Florida Administrative Code, Service Requirements for Call Aggregators.
(Fudge, C. Lewis)

STAFF ANALYSIS: Rule 25-24.640(1)(f), Florida Administrative Code, Service Requirements for Call Aggregators states:

- (1) Every call aggregator shall:
- (f) Place a written notice in plain view, in the immediate vicinity of each telephone served by the call aggregator, which meets the requirements of Section 364.3376(5), Florida Statutes (1995), and also clearly states at least the following information:
 - 1. Name of the company providing operator services as it appears on the certificate issued by the Commission;
 - 2. Instructions on how to reach the operator of the provider of local exchange telecommunications services;
 - 3. Instructions on how to reach emergency services;
 - 4. Instructions on how to place local and long distance calls;
 - 5. A toll-free number for refunds;
 - 6. The amount of any surcharge for local calls, long distance calls, directory assistance, or any other surcharges to be billed and collected by the call aggregator;
 - 7. If a surcharge applies whether or not the call is completed;
 - 8. If rate information for a local or long distance call is posted, the rate information shall be clearly separated and identified from the surcharge.
 - 9. The toll-free telephone number of the Florida Public Service Commission's Division of Consumer Affairs.

As provided in Commission Order PSC-00-0695-PAA-TP, Labree Management, Inc. had been classified as a call aggregator and provided service to units at the Parc Corniche Resort. On May 2, 2000, a Commission staff engineer conducted a call aggregator inspection of Unit 1303 at the Parc Corniche Resort. In correspondence dated May 15, 2000, staff notified Labree that it must comply with the Commission's call aggregator rules when providing telephone service to transient persons. Copies of the call aggregator rules and the inspection report were provided to Labree as an attachment to staff's May 15 correspondence.

On September 7, 2000, the same staff engineer conducted a follow up inspection of the Parc Corniche Resort, which was still managed by Labree Management, Inc. The engineer inspected Unit 1106 and found that Labree had still not implemented the requirement to post information specified in parts 1,2,5,7,8 and 9 of Rule 25-24.640(1)(f), Florida Administrative Code, Service Requirements for Call Aggregators. Because Labree was provided a copy of the Commission's call aggregator rules in staff's May 15 correspondence, staff opened this docket to initiate Show Cause proceeding against Labree Management, Inc. for apparent violations of Rule 25-24.640(1)(f), Florida Administrative Code.

Pursuant to Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its 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 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).

Staff filed a recommendation for the November 7, 2000 Agenda Conference. However, at the request of Labree, the Chairman deferred this docket to allow the company more time to work towards a settlement with staff. During this period, staff was informed that the Parc Corniche Resort is now under new management and the requirements of Rule 25-4.640(1)(f), Florida Administrative Code, are being met. The violations occurred during the negotiation and the transfer of management responsibilities from Labree to Emerson Communications. A third inspection was conducted on February 20, 2001 which confirmed that Rule 25-24.640(1)(f), Florida Administrative Code, had been satisfied. Under these circumstances staff believes that a show cause is no longer warranted.

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Therefore, staff recommends that the Commission should not order Labree Management, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$3,000 for apparent violations of Rule 25-24.640(1)(f), Florida Administrative Code, Service Requirements for Call Aggregators.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, If the Commission approves Issue 1, this docket should be closed upon issuance of the Commission's Order.
(Fudge)

STAFF ANALYSIS: Since no further Commission action is necessary, this docket should be closed upon issuance of the Commission's Order.