



Public Service Commission

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RECORDS AND REPORTING

DATE: MARCH 22, 2001

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

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) *c.p.f. BK*
DIVISION OF COMPETITIVE SERVICES (WILLIAMS) *TD* *120* *AK*

RE: DOCKET NO. 981488-TI - 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.

AGENDA: APRIL 3, 2001 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\981488R4.RCM

CASE BACKGROUND

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

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\$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, the Commission ordered Accutel to show cause why it should not be fined or have its certificate canceled for its apparent violations of Sections 364.10 (1) and 364.604(2), Florida Statutes, 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. In view of Accutel's failure to pursue its Response to Order to Show Cause with any diligence whatsoever, on April 20, 2000, Order No. PSC-00-0776-FOF-TI was entered, dismissing Accutel's Response. On May 5, 2000, however, Accutel filed a Motion for Reconsideration of Order No. PSC-00-0776-FOF-TI, alleging that the company had not been provided copies of all pleadings. That Motion was granted by Order No. PSC-00-1149-FOF-TI, entered on June 23, 2000, and Accutel's Response to Order to Show Cause was reinstated.

Thereafter, on July 12, 2000, the attorney of record for Accutel withdrew from any further involvement in the case. Certified mail to Accutel was then returned undelivered, and Accutel could not be reached at the telephone number on record at the Commission. Once again, Accutel filed no testimony and no Prehearing Statement. Staff made a final effort to reach Accutel by telephone and found the telephone number had been reassigned to another subscriber. At the March 5, 2001 Prehearing, Accutel made no appearance and staff has no information on how to contact them.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission, on its own motion, dismiss Accutel's September 8, 1999 Response to Order to Show Cause?

RECOMMENDATION: Yes. Accutel has failed to diligently pursue its Response to Order to Show Cause and has failed to comply with any aspect of the Order Establishing Procedure for this docket. In accordance with Order No. PSC-99-2496-PCO-TI, Accutel has waived

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the right to present any testimony, to raise any additional issues, and its position on the issues. Staff recommends, therefore, that Accutel's Response to Order to Show Cause be dismissed. **(FORDHAM)**

STAFF ANALYSIS: In Order No. PSC-99-1619-SC-TI, issued August 18, 1999, the Commission 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, 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. Based on that response, Order No. PSC-99-2496-PCO-TI, was issued September 20, 1999, setting the procedure for this docket, and establishing the hearing and prehearing dates.

Accutel failed to comply with the Order Establishing Procedure in any regard, and did not appear at the March 23, 2000 prehearing conference. Accordingly, Accutel's response was dismissed and the original Show Cause Order reinstated. The procedural dates were modified and, once again, Accutel failed to file testimony or a Prehearing Statement. Accutel made no appearance at the March 5, 2001 Prehearing.

Accutel has twice failed to comply with the Order Establishing Procedure in any regard, and did not appear at the March 23, 2000 or the March 5, 2001 prehearing conference. In view of Accutel's failure twice to pursue its Response to Order to Show Cause with any diligence whatsoever, staff recommends that the Commission, on its own motion, dismiss Accutel's Response.

ISSUE 2: Should the Commission require Accutel to pay the \$1,710,000 fine identified in Order No. PSC-97-1619-SC-TI?

RECOMMENDATION: Yes. Accutel has failed to show cause why it should not be fined in the amount of \$10,000 per infraction for a total of \$1,710,000 for its apparent violations of Sections 364.10 (1) and 364.604(2), Florida Statutes, Unlawful Billing Practices, and for Insufficient Management Capability, pursuant to Section

364.337(3), Florida Statutes. Therefore, the fine should be deemed assessed. If the fine is not received within 10 days of the issuance of the Commission's order, the fine should be forwarded to the Office of the Comptroller for further collection efforts.
(FORDHAM, WILLIAMS)

STAFF ANALYSIS: As set forth in the Case Background, in Order No. PSC-99-1619-SC-TI, issued August 18, 1999, the Commission 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 for its apparent violations of Sections 364.10 (1) and 364.604(2), Florida Statutes, 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. Since that response, however, Accutel has done nothing to pursue their response.

Staff does not believe that Accutel has shown cause why it should not be fined for its apparent violations of Sections 364.10 (1) and 364.604(2), Florida Statutes, Unlawful Billing Practices, and for Insufficient Management Capability, pursuant to Section 364.337(3), Florida Statutes. Accordingly, by 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 day a violation continues, 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). Furthermore, 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, Florida Administrative Code, 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, the Commission 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." Staff believes that Accutel's unlawful billing of its customers in Florida clearly demonstrates "willful" violation of Sections 364.10 (1) and 364.604(2), Florida

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Statutes. Accutel has submitted nothing to demonstrate otherwise. Therefore, staff recommends that the Commission order Accutel to pay the \$1,710,000 fine identified in Order No. PSC-99-1619-SC-TI. If the fine is not received within 10 days of the issuance of the Commission's order, the fine should be forwarded to the Office of the Comptroller for further collection efforts.

ISSUE 3: Should this Docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendations in Issues 1 and 2, this Docket will require no further action, and may be closed. (**FORDHAM**)

STAFF ANALYSIS: If the Commission approves staff's recommendations in Issues 1 and 2, this Docket will require no further action, and may be closed.