

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 960627-TI
proceedings against Heartline) ORDER NO. PSC-96-1123-AS-TI
Communications, Inc. for) ISSUED: September 5, 1996
violation of Rule 25-4.118,)
F.A.C., Interexchange Carrier)
Selection.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER APPROVING OFFER OF SETTLEMENT

BY THE COMMISSION:

BACKGROUND

From January 1, 1994 through June 30, 1996, the Division of Consumer Affairs has received 273 complaints against Heartline Communications, Inc. (Heartline) concerning unauthorized carrier changes (slamming). We have observed a steady increase in the number of consumer complaints each year. For example, 11 valid complaints were filed against Heartline in 1994, followed by 77 valid complaints during calendar year 1995. During the first six months of 1996, we verified that 185 consumer complaints filed against Heartline were apparent violations of Rule 25-4.118, Florida Administrative Code.

We were disturbed that complaints continued to increase despite our notifying Heartline of each complaint and seeking corrective action. Consequently, on May 30, 1996, our staff filed a recommendation that Heartline be ordered to show cause why it should not be fined or have its certificate cancelled for the apparent violations. This item was deferred from the June 11, 1996 agenda conference at Heartline's request. On June 28, 1996, Heartline submitted an offer of settlement. On July 18, 1996, our staff filed a recommendation to reject the settlement offer and the item was scheduled for the July 30, 1996 agenda conference. After Heartline reviewed staff's recommendation and before the scheduled agenda date, Heartline filed a second offer of settlement (Attachment A). This item was deferred from the July 30, 1996 agenda conference at our staff's request.

DOCUMENT NO. 96-DATE

09458 SEP-58

FPSC-RECORDS/REPORTING

SETTLEMENT OFFER

On July 26, 1996, Counsel for Heartline submitted a second offer of settlement. See Attachment A, which is incorporated into this Order by reference. We have observed and Heartline has agreed that the majority of the complaints we have received stem from the use of sweepstakes programs as a marketing tool. Consumers filled out letter of authorization (LOA) forms which were also advertised as entry forms for various types of contests such as "Win a Hawaiian Vacation" or "Win a Ford Mustang". We notified Heartline that we believed that this type of marketing was deceptive. Heartline's settlement offer states that it has discontinued this type of marketing in Florida and that it will not engage in this type of marketing for at least two years. Heartline has further stated that any future marketing programs will be in compliance with all Florida statutes and regulations and will be provided to our staff for review prior to implementation.

We find that it is appropriate to accept the settlement offer proposed by Heartline to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code. Continued violations of the Commission's rules may result in opening another docket to recommend additional action. Heartline shall pay \$50,000 to the Florida Public Service Commission, for forwarding to the Office of the Comptroller for deposit in the State General Revenue Fund. With the remittance of the \$50,000 settlement payment, this docket shall be closed.

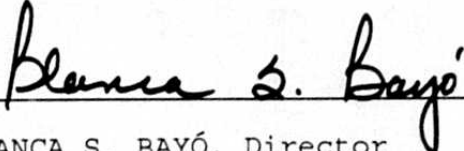
It is, therefore,

ORDERED by the Florida Public Service Commission that the settlement offer submitted by Heartline Communications, Inc. is approved, as set forth in the body of this Order. It is further

ORDERED that, upon our staff's verification of Heartline Communications, Inc.'s remittance of its settlement payment of \$50,000, this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 5th
day of September, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SKE

Commissioner J. Terry Deason dissented from the Commission's
decision.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section
120.59(4), 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.

ATTACHMENT A

Jim Mattox
Attorney and Counselor

July 26, 1996

Mr. Scott Edmonds
Division of Legal Services
Public Service Commission
Capital Circle Office Center
2540 Shurand Oak Blvd.
Tallahassee, FL 32399-0850

VIA FAX (904) 413-6595

Re: Docket No. 960627-TI
Heartline Communications, Inc

Dear Mr. Edmonds:

Heartline Communications, Inc., has reviewed Staff's concerns with our settlement offer of June 28, 1996. In a spirit of cooperation, without admitting liability or wrongdoing, Heartline would like to propose a resolution of the above numbered and styled cause in the following manner.

Pursuant to Staff's request, Heartline has made a decision to terminate its marketing agents that obtain LOAs through sweepstakes/box programs. Notices were given June 25, 1996. Under contract termination provisions, Heartline will accept no LOAs from the marketing companies after July 31, 1996.

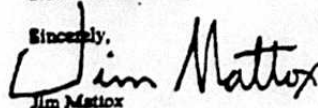
Heartline agrees that it will stay out of the box business for at least two years and will notify Staff if it decides to re-enter the box business. Heartline will submit its marketing materials to the staff at that time.

Heartline does not know at this time how it will market its services in Florida. Heartline agrees that when a new marketing plan is designed for Florida it will be in compliance with all statutes and regulations.

Heartline will provide Staff with the plan. Heartline agrees to pay \$50,000.00 to the Florida Public Service Commission for forwarding to the Office of the Comptroller for deposit in the State General Revenue Fund within 30 days after the date the PSC issues its order accepting the settlement.

Heartline agrees to reimburse any customer that complains for the amount of any charges the LEC billed the customer to change to Heartline or back to the carrier of the customer's choice. Heartline will also reimburse any complaining customer for the difference in usage rates that are higher than those changed by the previous carrier.

We hope that Staff will recommend this proposed settlement to the PSC and will have this case deferred if necessary.

Sincerely,

Jim Mattox