

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Coral Communications, Inc. for violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required.

DOCKET NO. 980336-TI
ORDER NO. PSC-98-0573-SC-TI
ISSUED: April 23, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE AND
PROPOSED AGENCY ACTION ORDER
REQUIRING CORAL COMMUNICATIONS, INC. TO CEASE BILLING IN FLORIDA,
REQUIRING INTEREXCHANGE CARRIERS TO DENY OR DISCONTINUE SERVICE
TO CORAL COMMUNICATIONS, AND
REQUIRING LOCAL EXCHANGE CARRIERS TO DENY BILLING SERVICE TO
CORAL COMMUNICATIONS WITHOUT THIRD PARTY VERIFICATION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that part of the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

On January 27, 1998, after receiving information that Coral Communications, Inc. (Coral), may be operating in Florida as a telecommunications company without a certificate, our staff sent a

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letter regarding certification and an application packet to Coral. On February 23, 1998, Coral responded by stating that it had no knowledge that its product was being marketed in Florida and that it does not and will not bill any customers in Florida. Eight days later, however, on March 3, 1998, our staff observed shoppers at the Tallahassee Mall submitting entry forms to a contest to win a 4-wheel drive vehicle. The contest was promoted by Coral Communications. From informal conversations with some of the shoppers, it appeared to our staff that few, if any, of the shoppers entering the contest realized that they were obligating themselves to a \$7.50 recurring monthly charge for a discount calling card on their local exchange telephone bill. The entry form alternately stated that the service was a travel card or a calling card with \$.25 per minute usage rates. The entry form also stated that a charge of \$.25 per day and a \$2.99 set up fee would apply whether the service was used or not. The form stated that "your telephone service will not change", but it is clear from the wording of the form that all contestants would be charged additional fees. The form specified no drawing date, and the "contest" is not registered with the Secretary of State, as required by law.

We believe that it is necessary to initiate this action against Coral at this time to prevent unauthorized billing because of the deceptive and misleading nature of the contest entry form described above. We find that Coral's actions constitute the fraudulent practice of "cramming" unauthorized charges onto telecommunications customers' local phone bills. The customers who have "entered" the "contest" have unknowingly subjected themselves to those unauthorized charges on their bills.

II. ALLEGED VIOLATIONS

Rule 25-24.470, Florida Administrative Code, states:

No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted. However, acquisition of equipment and facilities, advertising and other promotional

activities may begin prior to the effective date of the certificate at the applicant's risk that it may not be granted. In any customer contacts or advertisements prior to certification, the applicant must advise the customer that certification has not and may never be granted.

We find that Coral's "contest" entry forms served as letters of authorization (LOA) to provide and charge for telecommunications service to those who signed the forms. We also find that Coral's contest entry form LOA fails to advise the customer that certification has not and may never be granted. By soliciting LOAs to provide and charge for telecommunications service without a certificate, and by failing to advise the customer that certification had not been granted, Coral violated Rule 25-24.470, Florida Administrative Code.

III. CONCLUSION

A. Show Cause

Pursuant to Sections 364.01, 364.08, and 364.19, Florida Statutes, we have jurisdiction over Coral and its activities in Florida. In addition, pursuant to Section 364.285, Florida Statutes, we are authorized to impose on entities subject to our 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 a lawful rule or order of this Commission, or any provision of Chapter 364, Florida Statutes. We find that Coral may be providing telecommunications service without a certificate. Accordingly, we hereby order Coral to show cause in writing within twenty (20) days of the effective date of this Order why it should not be fined \$25,000 per day for its apparent violations of Rule 25-24.470, Florida Administrative Code. Failure to respond in a timely manner shall constitute an admission of the violations described above, waiver of the right to a hearing, and will result in the assessment of the appropriate fine.

B. Proposed Agency Action

Rule 25-24.4701 (3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited, states:

(3) The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

Accordingly, we order Coral to cease all billing in Florida until a certificate is issued and the Commission specifically authorizes Coral to operate in Florida. Further, all IXC's shall deny or discontinue providing service to Coral at the conclusion of this show cause proceeding. IXC's should contact the Commission at the conclusion of the show cause response period set out in the Order to determine whether the show cause proceeding has been concluded.

In addition, because Coral has sufficient information with each entry form to submit charges to Local Exchange Carriers' (LECs) subscribers, we are concerned that Coral may ultimately charge Florida subscribers based on the entry forms it has already collected in Florida. Based on our findings in this Order that the entry forms are deceptive and in violation of Chapter 364, Florida Statutes, and Commission rules, we find it appropriate to order the LECs not to bill any customers in Florida on behalf of Coral until such time as Coral has satisfied the Commission, through third-party verification, that subscribers have agreed to accept Coral's service offering.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Coral Communications, Inc., shall show cause in writing within twenty (20) days of the date of this Order why it should not be fined for Rule violations described in the body of this Order. It is further

ORDERED that failure to respond to this Order in the manner and by the date set forth in the Notice of Further Proceedings or Judicial Review section of this Order shall constitute an admission

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of the violations described in the body of this Order, waiver of the right to a hearing, and will result in the automatic assessment of an appropriate fine. It is further

ORDERED that Coral Communications, Inc., shall cease all billing in Florida until a certificate is issued and the Commission specifically authorizes Coral to operate in Florida. It is further

ORDERED that all Interexchange Carriers shall deny or discontinue providing service to Coral Communications, Inc., at the conclusion of this show cause proceeding. Any Interexchange Carriers providing service to Coral shall contact the Commission at the conclusion of the show cause response period set forth herein to determine whether the show cause proceeding has been concluded. It is further

ORDERED that Local Exchange Carriers shall not bill any customers in Florida on behalf of Coral Communications, Inc., until such time as Coral Communications, Inc., is certificated and has satisfied the Commission, through third-party verification, that subscribers have agreed to accept Coral's service offering. It is further

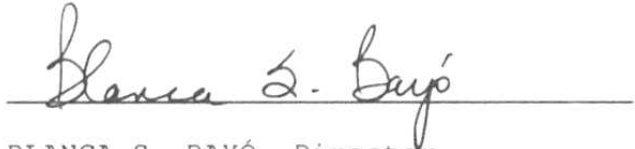
ORDERED that the portions of this Order which require Coral Communications, Inc. to cease all billing in Florida, require Interexchange Carriers to deny or discontinue providing services to Coral Communications, Inc., and require Local Exchange Carriers to refuse billing services to Coral Communication, Inc., are issued as Proposed Agency Action and shall become final and effective unless an appropriate petition, in the form provided by Rule-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this docket shall remain open pending the resolution of the show cause process or any protest to the Proposed Agency Action portion of this Order. It is further

ORDERED that in the event the Proposed Agency Action portions of this Order become final, and Coral Communications, Inc., fails to respond to this Order to Show Cause as prescribed herein, this Docket shall be closed.

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By ORDER of the Florida Public Service Commission this 23rd
day of April, 1998.

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CB

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The show cause portion of this Order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code.

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This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 13, 1998.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

The portion of the action proposed herein which is preliminary in nature will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this portion of the Order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 14, 1998.

In the absence of such a petition, the proposed agency action portion of the order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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If the proposed agency action portions of this order become final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.