

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Richard Austin for apparent violation of Rule 25-24.805, F.A.C., Certificate of Public Convenience and Necessity Required.

DOCKET NO. 991664-TX
ORDER NO. PSC-00-0072-SC-TX
ISSUED: January 7, 2000

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE

BY THE COMMISSION:

I. Background

In September, 1998, TeleConex, Inc. d/b/a TeleConex (TeleConex), a certificated alternative local exchange company (ALEC), entered into a marketing arrangement with C.I.O., Inc. (C.I.O.). On May 9, 1999, C.I.O. entered into a marketing agreement with Pre-Cell Solutions, Inc. (Pre-Cell), a certificated ALEC.

On May 12, 1999, our Division of Consumer Affairs received a complaint from TeleConex against Pre-Cell regarding Family Phone Company - a.k.a. C.I.O. - indicating that C.I.O. telephoned TeleConex's customers telling them that TeleConex was bankrupt and going out of business. On June 24, 1999, our staff met with TeleConex to discuss the problems they were having with C.I.O.. TeleConex stated that C.I.O. was collecting money from customers on its behalf and not forwarding the monies to TeleConex. In addition, TeleConex alleged that C.I.O. was marketing TeleConex's customers stating that TeleConex was in bankruptcy and it could provide the customers with a less expensive service.

On July 27, 1999, C.I.O. submitted its application for ALEC service in the State of Florida. On July 30, 1999, our staff mailed a letter to C.I.O. stating that it

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corporate name, price list and the application. On September 13, 1999, our staff, having received no response from C.I.O. to the July 30, 1999 letter, staff mailed a certified letter to C.I.O. requesting that the amendments be made before September 28, 1999, or staff would recommend denying its application. The letter was signed for and received by C.I.O. on September 16, 1999.

On September 21, 1999, C.I.O. submitted a revised application, along with a request to withdraw its price list and a statement that prior to providing local service, C.I.O. would submit a price list. On September 27, 1999, our staff requested deferral of this docket from the October 5, 1999 Agenda Conference.

On September 28, 1999, Pre-Cell terminated its marketing agreement with C.I.O. for C.I.O.'s failure to remit monies collected from customers for telephone service to Pre-Cell. In October, 1999, our staff began receiving complaints from customers regarding C.I.O. and Pre-Cell.

On October 20, 1999, our Division of Auditing and Financial Analysis provided notice to Mr. Richard Austin, president of C.I.O., informing him of an investigation of financial records. On October 22, 1999, BellSouth provided our staff a list of telephone accounts that were billed to C.I.O. and a list of telephone accounts billed to one account in the name of Richard Austin. A copy of this list is appended to this Order as Attachment A, which by reference, is incorporated herein. BellSouth disconnected all of these accounts as fraudulent.

On November 12, 1999, our staff received an audit report stating that C.I.O. had failed to allow audit staff access to review financial records. On November 15, 1999, all telephone numbers used by our staff to contact C.I.O. were disconnected.

II. Apparent Violation

Certificate of Public Convenience and Necessity

Rule 25-24.805(1), Florida Administrative Code, provides in pertinent part:

No person shall provide alternative local exchange telecommunications service without first obtaining a certificate of public convenience and necessity from the Commission.

Our staff became aware of the operations of Mr. Richard Austin on June 24, 1999, through its meeting with TeleConex. TeleConex informed our staff that C.I.O. - a.k.a. Family Phone Company - was representing itself as a telecommunications provider in its solicitation for service. At that time, our staff notified C.I.O. that it needed to obtain a certificate.

On May 9, 1999, C.I.O. entered into an agreement with Pre-Cell, effectively conducting business in the same manner as it had during its relationship with TeleConex. C.I.O. continued representing itself as a telecommunications provider, in addition to not paying Pre-Cell, while marketing and collecting payments for Pre-Cell.

After his relationship with Pre-Cell was terminated, Mr. Austin could no longer obtain local exchange services from BellSouth by ordering it under the name Pre-Cell. Our staff alerted BellSouth that C.I.O. did not have a certificate to provide ALEC services in Florida and requested information from BellSouth regarding the number of accounts it may have provisioned for C.I.O. BellSouth's research showed that accounts existed in CIO's name plus Mr. Austin's name. Apparently when Mr. Austin had difficulty convincing a BellSouth representative to establish the account in C.I.O.'s name, he would open an account in his personal name. According to information provided by BellSouth, it appears that Mr. Austin ordered in his own name and received approximately 50 local exchange service accounts for various addresses throughout Florida. Apparently, Mr. Austin would then bill end users residing at the addresses for which he ordered local exchange services. In effect, Mr. Austin was reselling local exchange services without having a certificate of public convenience and necessity approved by the Commission. Based on the foregoing, it appears that Mr. Austin is in violation of Rule 25-24.805(1), Florida Administrative Code.

III. Conclusion

Pursuant to Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our 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 our rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse

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any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

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, F.A.C., 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, we 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." Thus, any intentional act, such as Mr. Richard Austin's conduct at issue here, would meet the standard for a "willful violation." We find that Mr. Richard Austin's conduct by ordering local exchange telecommunications services in his own name, for addresses he did not occupy or have an affiliation, then separately charging the end users for these services, constitutes the provisioning of ALEC services without a certificate of public convenience and necessity, in apparent violation of Commission Rule 25-24.805, Florida Administrative Code. As such, Mr. Austin's actions have been "willful" in the sense intended by Section 364.285, Florida Statutes.

Accordingly, Mr. Richard Austin shall show cause in writing within 21 days of the issuance of the Commission's Order why he should not be fined \$25,000 for apparent violation of Rule 25-24.805, Florida Administrative Code, Certificate of Public Convenience and Necessity Required.

If Mr. Richard Austin timely responds to this Order, this docket shall remain open pending the resolution of the show cause proceeding. Mr. Austin's response shall contain specific allegations of fact or law. If Mr. Austin fails to respond to this Order to Show Cause, the fines shall be deemed assessed. If the fines are not paid within ten business days after this Order becomes final, the fines shall be forwarded to the Office of the Comptroller for collection, and this docket shall be closed administratively.

Any fines received by the Commission shall be forwarded to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that Mr. Richard Austin shall show cause in writing within 21 days of the issuance of this Order why he should not be fined \$25,000 for apparent violation of Rule 25-24.805, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. It is further

ORDERED that any response to this Order to Show Cause filed by Mr. Richard Austin shall contain specific allegations of fact or law and shall identify his name and this docket number. It is further

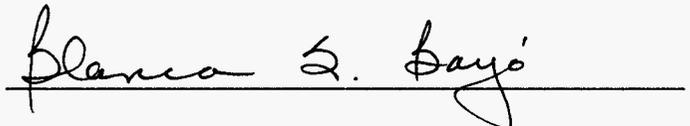
ORDERED that failure by Mr. Richard Austin to respond to this Order to Show Cause in the manner and date set forth in the "Notice of Further Proceedings and Judicial Review" section of this Order shall constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and the fines shall be deemed assessed. It is further

ORDERED that in the event Mr. Richard Austin fails to respond to this Order and the fines are not paid within ten business days after this Order becomes final, the fines shall be forwarded to the Office of the Comptroller for collection. It is further

ORDERED that any fines received by the Commission shall be forwarded to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. It is further

ORDERED that upon payment of the fines or referral to the Comptroller's Office, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of January, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response 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 January 28, 2000.

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 and a default pursuant to Rule 28-106.111(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.

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ATTACHMENT A

407 733 1159 393 *MEM2* SEP 28 1999 *LIVE* 9E MELB VR3CL
E04 & JRC ONLINES DOWN 6PM FRI NPA SPLIT PFI
RICHARD AUSTIN AMT DUE 156.95
DATE TYPE NOTATIONS

	FU	ACT	USERID
0927 IMAT NEW SVC IN SE 561 489-0137 016 SEAK #N7CGKC		***	SQ20MFS1
0927 IMAT NEW SVC IN NF 904 778-2210 935 SEAK #N62YNT		***	SQ20JRC1
0927 IMAT NEW SVC IN NF 904 737-0057 306 SEAK #NB2FCH		***	SQ20JRC1
0927 IMAT NEW SVC IN NF 904 762-3414 466 SEAK #NCB3DW		***	SQ20JRC1
0927 IMAT NEW SVC IN NF 904 771-1004 004 SEAK #N803G4		***	SQ20JRC1
0927 IMAT NEW SVC IN NF 407 757-9633 774 SEAK #NBTN6L		***	SQ20JRC1
0927 IMAT NEW SVC IN NF 904 220-7400 412 SEAK #N8H19K		***	SQ20JRC1
0927 IMAT NEW SVC IN NF 407 259-7277 513 SEAK #N1XQRP		***	SQ20JRC1
0927 IMAT NEW SVC IN NF 904 721-3666 758 SEAK #N286RR		***	SQ20JRC1
0927 IMAT NEW SVC IN NF 407 433-0202 205 SEAK #N34GGB		***	SQ20JRC1
0927 IMAT NEW SVC IN NF 904 317-7444 251 SEAK #ND8923		***	SQ20JRC1
0913 MISX 163616 REVIEWED DRC		***	BYRPHXY
0912 MISX 222631 AUTO DENIAL INELIGIBLE - RTA		***	RI10B05L
0909 TIPS \$173.39 CASE 10:05 0909 T009 1MN 0232		***	TIPS1MN
0901 MISX 135459 MCC SENT RCK		***	LXCDLWE
0901 SIC TRT		***	LXCDLWE
0901 MCC +1 ,PB0909 A170.90	0912	DRC	LXCDLWE
0901 RCKX 170.90 170.90NSF RCCY		***	RI10B051

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407 733 1459 393 *MEM2* SEP 28 1999 *LIVE*
E04 & JRC ONLINES DOWN 6PM FRI NPA SPLIT
RICHARD AUSTIN AMT DUE 156.95
DATE TYPE NOTATIONS

9E MELB VR3CL
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										FU	ACT	USERID
0928	IMAT	NEW	SVC	IN	NY	407	723-9618	612	SEAK	#NDPP6G	***	SQ20JRC1
0928	IMAT	NEW	SVC	IN	NY	407	835-9510	459	SEAK	#N2QOKR	***	SQ20JRC1
0928	IMAT	NEW	SVC	IN	NY	407	726-8080	562	SEAK	#NGFCKY	***	SQ20JRC1
0928	IMAT	NEW	SVC	IN	NY	904	384-0975	754	SEAK	#N26WTN	***	SQ20JRC1
0928	IMAT	NEW	SVC	IN	NY	904	766-4211	703	SEAK	#NG6BKV	***	SQ20JRC1
0928	IMAT	NEW	SVC	IN	NY	904	491-8777	021	SEAK	#N97F98	***	SQ20JRC1
0928	IMAT	NEW	SVC	IN	NY	904	328-4552	129	SEAK	#NCFVMJ	***	SQ20JRC1
0928	IMAT	NEW	SVC	IN	SE	561	586-5072	619	SEAK	#NCC5MB	***	SQ20MFS1
0928	IMAT	NEW	SVC	IN	NY	407	733-3789	282	SEAK	#NG5KOD	***	SQ20JRC1
0928	IMAT	NEW	SVC	IN	NY	407	674-0296	779	SEAK	#N8XBGF	***	SQ20JRC1
0928	IMAT	NEW	SVC	IN	SE	561	794-3738	759	SEAK	#NCWQ32	***	SQ20MFS1
0927	IMAT	NEW	SVC	IN	NY	407	952-1919	727	SEAK	#NFKVVT	***	SQ20JRC1
0927	IMAT	NEW	SVC	IN	NY	904	886-9349	382	SEAK	#N007GK	***	SQ20JRC1
0927	IMAT	NEW	SVC	IN	NY	904	805-9991	209	SEAK	#N88Y2N	***	SQ20JRC1
0927	IMAT	NEW	SVC	IN	NY	407	275-0513	513	SEAK	#NCDV54	***	SQ20JRC1
0927	IMAT	NEW	SVC	IN	NY	407	297-6380	648	SEAK	#N5100B	***	SQ20JRC1
0927	IMAT	NEW	SVC	IN	NY	407	733-0873	045	SEAK	#N4G4HV	***	SQ20JRC1
0927	IMAT	NEW	SVC	IN	SE	561	620-0872	094	SEAK	#ND2NYJ	***	SQ20MFS1

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E04 & JRC ONLINES DOWN 6PM FRI NPA SPLIT
RICHARD AUSTIN AMT DUE 156.95
DATE TYPE NOTATIONS

9E MELB VR3CL
PYRC

									FU	ACT	USERID
1006	IMAT	NEW	SVC	IN	NF	904	448-6587	635	SEAK	#NDVBRK	*** SQ20JRC1
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1006	IMAT	NEW	SVC	IN	NF	407	854-4955	106	SEAK	#N6KPKT	*** SQ20JRC1
1005	IMAT	NEW	SVC	IN	NF	904	726-8277	776	SEAK	#NF7ML4	*** SQ20JRC1
1005	IMAT	NEW	SVC	IN	NF	904	731-5497	235	SEAK	#N5K640	*** SQ20JRC1
1005	IMAT	NEW	SVC	IN	NF	407	725-2333	544	SEAK	#N51T57	*** SQ20JRC1
1004	IMAT	NEW	SVC	IN	NF	407	727-3953	332	SEAK	#NG8Q70	*** SQ20JRC1
1004	IMAT	NEW	SVC	IN	NF	407	768-0404	111	SEAK	#N4E1FM	*** SQ20JRC1
1004	IMAT	NEW	SVC	IN	NF	904	634-0018	710	SEAK	#N8E8DB	*** SQ20JRC1
1004	IMAT	NEW	SVC	IN	NF	904	398-9190	951	SEAK	#N6G8NV	*** SQ20JRC1
1004	IMAT	NEW	SVC	IN	NF	407	812-4707	436	SEAK	#NFYGTW	*** SQ20JRC1
1004	IMAT	NEW	SVC	IN	SE	561	286-4700	645	SEAK	#N5B6L8	*** SQ20MFS1
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1001	IMAT	NEW	SVC	IN	NF	904	781-0916	720	SEAK	#NCH8ME	*** SQ20JRC1
1001	IMAT	NEW	SVC	IN	NF	407	956-8445	286	SEAK	#N4QC82	*** SQ20JRC1
1001	IMAT	NEW	SVC	IN	NF	904	743-7344	334	SEAK	#N4B694	*** SQ20JRC1
1001	IMAT	NEW	SVC	IN	NF	407	984-2206	336	SEAK	#N626JT	*** SQ20JRC1
1001	IMAT	NEW	SVC	IN	NF	904	908-9355	390	SEAK	#NG4167	*** SQ20JRC1

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NC DUP CUST EXISTS

RICHARD AUSTIN PB 020 STA 70 TAX NNNN
206 VIN ROSE CIR SE RA 021 RTA 40 TAR 036702 TBE
MELB FL 32909 RB 029 NT AVT 58 DEP
PPD CCE AMT DUE 156.95
CI MILITARY RETRD CBR 733-5304

*one acct
billed*

9E MELB VR3CL

PYRC
CC D MCC5 C3144
0288 DOI 082098

(BSUM) SS(1);N API
IC 3/0040 2/0055 P/0042 TRT 000007045040 RCK 000000000010
LB 2.49 BAL 0.00 CC 156.95 TOT 156.95 LP

*CIV 0898
FE P FS 2 RCM
SS 219-88-3836

DATE TYPE NOTATIONS

URB 22.90
DEN 134.05
FU ACT USERID

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1007 IMAT NEW SVC IN SE 561 460-3883 631 SEAK #N1DW07
1006 IMAT NEW SVC IN NF 407 737-7255 382 SEAK #N7458L
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1006 IMAT NEW SVC IN SE 561 464-8415 283 SEAK #N7YJ56
1006 IMAT NEW SVC IN NF 407 953-2171 005 SEAK #N59RF3
1006 IMAT NEW SVC IN NF 904 722-0006 685 SEAK #N0812D
1006 IMAT NEW SVC IN NF 904 766-0888 303 SEAK #N324RT
1006 IMAT NEW SVC IN NF 407 952-5792 582 SEAK #N2GBYR

*** SQ20JRC1
*** SQ20MFS1
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