

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 981488-TI
ORDER NO. PSC-01-0915-FOF-TI
ISSUED: April 9, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
LILA A. JABER
MICHAEL A. PALECKI

ORDER DISMISSING RESPONSE TO ORDER TO SHOW CAUSE
AND IMPOSING FINE FOR VIOLATION OF STATUTES

BY THE COMMISSION:

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 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 \$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, we 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

DOCUMENT NUMBER-DATE

04347 APR-98

FPSC-RECORDS/REPORTING

ORDER NO. PSC-01-0915-FOF-TI
DOCKET NO. 981488-TI
PAGE 2

Section 364.337(3), Florida Statutes. On September 8, 1999, Accutel responded to our Show Cause Order and this matter was set for an administrative hearing.

On February 1, 2000, Order PSC-00-0201-CO-TI was entered in Docket No. 991551-TI. That Order canceled certificate No. 4854, issued to Accutel, for failure to pay Regulatory Assessment Fees.

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 that 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 we have no information on how to contact them.

Accutel has failed to comply with our Order Establishing Procedure in any regard, and did not appear at the March 23, 2000, and March 5, 2001, prehearing conferences. In view of Accutel's failure to pursue its Response to Order to Show Cause with any diligence whatsoever, we hereby dismiss Accutel's Response to Order to Show Cause.

In Order No. PSC-99-1619-SC-TI, issued August 18, 1999, we 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

ORDER NO. PSC-01-0915-FOF-TI
DOCKET NO. 981488-TI
PAGE 3

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. Accutel has failed to show 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, 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 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." We believe that Accutel's unlawful billing of its customers in Florida clearly demonstrates "willful" violation of Sections 364.10 (1) and 364.604(2), Florida Statutes. Accutel has submitted nothing to demonstrate otherwise. Therefore, Accutel is ordered 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 this Order, the fine amount shall be forwarded to the Office of the Comptroller for further collection efforts.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Accutel Communications, Inc.'s Response to Order to Show Cause is hereby dismissed. It is further

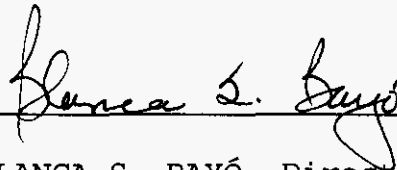
ORDER NO. PSC-01-0915-FOF-TI
DOCKET NO. 981488-TI
PAGE 4

ORDERED that Accutel Communications, Inc. shall pay the \$1,710,000 fine identified in Order No. PSC-99-1619-SC-TI. It is further

ORDERED that if the fine is not received within 10 days of the issuance of this Order, the fine amount shall be forwarded to the Office of the Comptroller for further collection efforts. It is further

ORDERED that this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 9th Day of April, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CLF

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.

ORDER NO. PSC-01-0915-FOF-TI
DOCKET NO. 981488-TI
PAGE 5

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 in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).