

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: INITIATION OF SHOW CAUSE	)	DOCKET NO. 890797-TC
PROCEEDINGS AGAINST AVTEL, INC. FOR	)	DOCKET NO. 890893-TC
VIOLATION OF RULES 25.24.505, 25-24.515	)	
AND 25-24.520	)	ORDER NO. 22045
	)	ISSUED: 10-11-89

The following Commissioners participated in the disposition of this matter:

- MICHAEL McK. WILSON, Chairman
- THOMAS M. BEARD
- BETTY EASLEY
- GERALD L. GUNTER
- JOHN T. HERNDON

ORDER INITIATING SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

On December 29, 1988 Consumer Affairs received a complaint from a Mr. Joffee in regard to Avtel pay stations in Boca Raton, Florida at the Boca Hamptons Shopping Mall. Mr. Joffee said the payphone numbers were not legible. Mr. Joffee stated that he deposited \$3.75 in the payphones, and he was cut off during his long distance phone call. Mr. Joffee wanted the service problem corrected and a refund of \$3.75.

On January 19, 1989, Consumer Affairs mailed a letter which requested that Avtel submit a \$3.75 refund to Mr. Joffee and correct the service problem. Avtel did not respond to the letter.

On February 10, 1989, FPSC Staff called the listed home office telephone number, (407) 479-2300, and left a message on an answering machine.

On February 10, 1989, FPSC Staff called the number Avtel had listed for repair service, (407) 479-3639. This number was a residence with no knowledge of Avtel or Steven Eisenberg, it's Sr. Vice President.

On February 15, 1989, Mr. Eisenberg contacted FPSC Staff and stated that the phones would be repaired. Mr. Eisenberg stated that he would submit a copy of the refund check to Ms. Shirley Stokes in Consumer Affairs.

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FPSC-RECORDS/REPORTING

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On February 20, 1989, FPSC Staff mailed another letter which requested Mr. Eisenberg to submit a refund check to Mr. Joffe. No response was received. Since that time, FPSC Staff has attempted to contact Mr. Eisenberg at the home office number, (407) 479-2300, but it has been disconnected.

Rule 25-24.515(5) requires each telephone station to be equipped with a legible sign with the telephone number and address of the station, name or logo of the owner and the party responsible for repairs and refunds, address of responsible party and free phone number of responsible party.

Rule 25-24.505 requires a response to Commission staff inquiries concerning service or other complaints. This response must be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Rule 25-24.520 requires a company to file updated information such as their address and phone number within ten days after changes occur.

Pursuant to Section 364.285, Florida Statutes, this Commission is authorized to levy a fine of up to \$5,000 for each violation of a statute, rule or order subject to the Commission's jurisdiction or to revoke a certificate of public convenience and necessity therefor. Further, Rule 25-24.514 (1)(a) and (b) states that the Commission may cancel a company's certificate for violation of the terms and conditions under which the authority was granted, or for violation of rules or orders.

We find that prima facia evidence has been shown that Avtel has violated Rule 25-24.515(5) by failing to have a telephone number of the station and a free number of the responsible party, violated Rule 25-24.505, by not responding to staff inquiries, and violated Rule 25-24.520 by failing to file updated information such as address and phone number within ten days after changes occurred. Therefore, Avtel shall show cause why they should not be sanctioned for these violations.

In view of the violations alleged, we believe that if no mitigating circumstances are proven a fine of \$600.00 should be imposed and that if no response is received hereto, Avtel's certificate should be canceled.

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The amount of the proposed fine is based on the Uniform Fine Methodology. The specific base point assessment is a total of twenty-six points for the three different violations. The company's 1987 annual Florida Jurisdictional Gross Revenue was \$6,300.00. Information for 1988 is not available because Avtel failed to file a 1988 gross revenue report. Based on this revenue, we believe a fine of approximately one tenth of 1% of the gross revenues multiplied by the total number of points is appropriate. In addition to the amount of \$163.80 resulting from this calculation, we believe it is appropriate to recover the \$400 cost of FPSC Staff's travel to evaluate Avtel's phones. Therefore, we believe \$600.00 is an appropriate fine.

All responses to this Order to Show Cause shall be filed in conformance with Rules 25-22.036(7)(a) and 25-22.037(1), Florida Administrative Code. Each response shall contain specific statements as to fact and law. If Avtel fails to respond to this show cause in the form and within the time limits prescribed, the facts alleged in this Order shall be deemed true and shall constitute an admission of guilt of the violations and a waiver of the right to a hearing.

In view of Avtel Inc.'s history of not responding to letters, collection of the \$600.00 fine shall be referred to the Comptroller's office for further collection efforts should Avtel fail to respond to reasonable collection efforts. Reasonable collection efforts shall constitute two certified letters requesting payment.

Docket Number 890893-TC was opened in order to initiate show cause proceedings against Avtel for violation of Rule 25-24.520(2) which requires nonLEC PATS providers to file annual reports by January 31 of each year. Since Docket Number 890797-TC was also opened to initiate show cause proceedings against Avtel, Docket Number 890893-TC should be closed. Further, since the show cause fine in issue one accounts for violations of Rule 25-24.520, no additional fine amount will be imposed for failure to file the annual report.

Based on the foregoing it is:

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ORDERED that Avtel, Inc., Certificate Number 1662, shall show cause why they should not be fined \$600.00 and have their certificate cancelled for violation of Commission Rules 25-24.515(5), 25-24.505 and 25-24.520. It is further

ORDERED that any response filed by Avtel must contain specific statements as to fact and law. It is further

ORDERED that upon receipt of a response as outlined above, and upon a request for a hearing, further proceedings will be scheduled by the Commission, at which time Avtel will have an opportunity to contest the violations alleged above. It is further

ORDERED that Avtel's failure to respond in the form and within the prescribed time will constitute admission of guilt of the violations alleged above and a waiver of the right to a hearing. It is further

ORDERED that if no timely response to this Order is filed, Avtel's certificate will be revoked. It is further

ORDERED that if a fine is imposed and reasonable efforts at collection thereof are unsuccessful, this Commission shall forward the matter to the Comptroller's office for collection. It is further

ORDERED that reasonable collection efforts shall constitute two certified letters requesting payment and that after collection of the fine or referral to the Comptroller's office, the docket will be closed. It is further

ORDERED that Docket Number 890797 will remain open pending the expiration of the show cause proceedings. It is further

ORDERED that Docket Number 890893-TC is closed.

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By ORDER of the Florida Public Service Commission,  
this 11th day of OCTOBER, 1989.

STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

JSR

by: Kay Flynn  
Chief, Bureau of Records

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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are adversely affected by the action proposed by this order may file a petition for a formal proceeding pursuant to Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on

Failure to respond within the time set forth above shall constitute a 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

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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 sewer 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 the default date set forth in 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.