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Vandiver *V*

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

AUGUST 1, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (K. LEWIS) *KOL*  
DIVISION OF LEGAL SERVICES (EDMONDS) *meB*  
DIVISION OF CONSUMER AFFAIRS (PRUITT) *NP*

RE: DOCKET NO. 960627-TI - HEARTLINE COMMUNICATIONS, INC -  
INITIATION OF SHOW CAUSE PROCEEDINGS FOR VIOLATION OF  
RULE 25-4.118, F.A.C., INTEREXCHANGE CARRIER SELECTION

AGENDA: 08/13/96 - REGULAR AGENDA -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: 3:\PSC\CMU\WP\960627C.RCM

CASE 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). Staff has observed a steady increase in the number of consumer complaints each year. For example, 11 valid complaints were filed against the company in 1994, followed by 77 valid complaints during calendar year 1995. During the first six months of 1996, staff verified that 185 consumer complaints filed against Heartline were valid (i.e. apparent violations of Rule 25-4.118, Florida Administrative Code).

Staff was disturbed that complaints continued to increase despite our notifying Heartline of each complaint and seeking corrective action. Consequently, on May 30, 1996, staff filed a recommendation that the company 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 the request of Heartline. On June 28, 1996, Heartline submitted an offer of settlement. On July 18, 1996, staff filed a recommendation that the Commission reject the settlement offer and the matter was scheduled for the July 30, 1996 agenda conference. After Heartline reviewed staff's recommendation

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and before the scheduled agenda date, the company filed a second offer of settlement as an attempt to satisfy staff's concerns with its original settlement offer. Therefore, the item was deferred from the July 30, 1996 agenda conference at staff's request so that we could review and make a recommendation on Heartline's second offer of settlement (Attachment 2).

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission accept the settlement proposed by Heartline Communications, Inc. as resolution of the apparent violations of Rule 25-4.118, Florida Administrative Code?

**RECOMMENDATION:** Yes.

**STAFF ANALYSIS:** On July 26, 1996, Counsel for Heartline submitted an offer of settlement (Attachment A). The settlement offer can be summarized as follows.

- 1) Heartline admits no liability or wrongdoing.
- 2) Heartline has terminated its marketing agents that obtain LOAs through sweepstakes/box programs. On June 25, 1996, Heartline notified each of its marketing firms of this decision.
- 3) Heartline will accept no LOAs from the marketing companies after July 31, 1996.
- 4) Heartline will not engage in this type of marketing activity for at least two years and will notify staff and submit its marketing materials to the staff prior to engaging in this type of marketing in the future.
- 5) Heartline is in agreement that any new marketing plan that it decides to use in Florida will be in compliance with all statutes and regulations.

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- 6) Heartline will 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 within 30 days of the date the Commission issues an order accepting the settlement.
- 7) Heartline will reimburse any customer that complains for the amount of any charges the local exchange company (LEC) billed the customer to change its primary interexchange carrier (PIC) to Heartline or back to the carrier of the customer's choice.
- 8) Heartline will reimburse any customer that complains for the difference in usage rates that are higher than those charged by the previous carrier.

Staff has 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". Staff 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 staff for review prior to implementation.

Staff believes the \$50,000 payment Heartline has agreed to submit to the Commission should be accepted. The \$50,000 should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. This amount is reasonable and consistent with settlement payments made by other long distance companies in resolution of slamming activities.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, this docket should be closed with the approval of Issue 1 and remittance of the \$50,000 settlement.

**STAFF ANALYSIS:** If the Commission accepts staff's recommendation in Issue 1 and upon remittance of the \$50,000 settlement by Heartline, this docket may be closed.

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 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

VIA FAX (904) 413-6593

Re: Docket No. 960627-TT  
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.

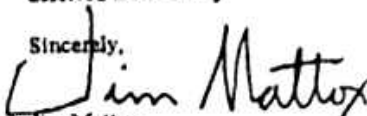
Heartline does not know at this time how it will market its services in Florida. Heartline agrees that when a new marketing plan is designed for Florida it will be in compliance with all statutes and regulations.

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

