

THE STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

WLBERTH GAVIRIA, Petitioner	)	
	)	
v.	)	CASE No. 96-3925
	)	
The FLORIDA PUBLIC SERVICE	)	
COMMISSION, Respondent	)	
	)	
	)	

THE FLORIDA PUBLIC SERVICE COMMISSION'S  
PROPOSED RECOMMENDED ORDER

The Florida Public Service Commission herewith respectfully files its Proposed Recommended Order in the above-captioned proceeding VIA-HAND DELIVERY and certifies that a true and correct copy has been furnished by Certified Mail this 14th day of January, 1997, to the following:

Mr. Wlberth Gaviria  
6156 SW 133rd Place  
Miami, FL 33183 - 5131

CHARLES J. PELLEGRINI  
Staff Counsel  
Florida Bar No. 0989274

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
(904) 413-6199

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THE STATE OF FLORIDA  
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WLBERTH GAVIRIA, Petitioner )  
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 The FLORIDA PUBLIC SERVICE )  
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APPEARANCES

For Respondent: Charles J. Pellegrini  
Staff Counsel  
The Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0863

STATEMENT OF THE ISSUES

- (1) Whether Wlberth Gaviria violated Rule 25-30.515, Florida Administrative Code.
- (2) Whether Wlberth Gaviria's Certificate of Public Convenience and Necessity, Certificate No. 3320, should be revoked.

PRELIMINARY STATEMENT

Wlberth Gaviria (Gaviria) was certificated by the Florida Public Service Commission (Commission) to provide pay telephone service by Commission Order No. PSC-93-0548-FOF-TC, issued April 12, 1993. On March 20, 1996, the Commission issued Order No. PSC-96-0388-FOF-TC, in which it ordered Gaviria to show cause why its certificate should not be revoked or why it should not be fined for violations of Rules 25-30.512 and 25-30.515, Florida Administrative Code. On April 9, 1996, Gaviria responded to the

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Commission's order with a petition to initiate formal proceedings for the resolution of the matter pursuant to Section 120.57(1), Florida Statutes.

On August 9, 1996, the Commission referred the case to the Division of Administrative Hearings. Originally, the case was scheduled to be heard on November 18, 1996. On November 4, 1996, Gaviria petitioned for a continuance. The petition was granted, and the hearing was rescheduled for December 16, 1996.

At hearing, the Commission called four witnesses: Richard Moses, Ralph King, Chester Wade, and Victor Cordiano. Gaviria failed to make an appearance. Commission exhibits were admitted into evidence as follows:

Exhibits 1(RM-1), 2(RM-1A), 3(RM-2), and 4(RM-4) through 6(RM-6);

Exhibits 7, 9, 11, 12, 14 through 17, 19, 21, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48 through 68 (RK-1 through RK-43, RK-45); and  
Exhibits 8, 10, 13, 18, 20, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47 (RK-1A, RK-2A, RK-4A, RK-8A, RK-9A, RK-11A through RK-23A);

Exhibits 70 through 92 (CW-1 through CW-18, CW-20 through CW-24); and

Exhibits 98A, 98B, 98C, 98D, 99 through 140 (VC-1 through VC-41, VC-43, VC-44A, VC-44B, and VC-45).

Chapter 364, Florida Statutes, Chapter 25-22, Florida Administrative Code, Chapter 25-24, Florida Administrative Code, Order No. PSC-96-0388-FOF-TC, and Order No. PSC-93-0548-FOF-TC were officially recognized.

The Commission agreed to file a proposed recommended order within 10 days of the availability of the hearing transcript. The Commission timely filed its proposed recommended order on January 13, 1997.

FINDINGS OF FACT

I. South Telecommunications, Inc.

1) Gaviria is a pay telephone service provider in Miami, Florida. It is owned by Wlberth Gaviria. (TR 12)

2) Gaviria holds Certificate No. 3320 to provide public pay telephone service, authorized by the Commission by Order No. PSC-93-0548-FOF-TC, issued April 12, 1993. (TR 12)

3) Wlberth and Heiner Gaviria jointly own a company named South Telecommunications, Inc., (STI). (TR 12-13)

4) In March 1996, the Commission denied STI's application for a certificate to provide public pay telephone service because Rule 25-24.511(4), Florida Administrative Code, restricts a pay telephone provider to a single certificate. As noted above, Wlberth Gaviria, with major ownership interests in both Gaviria and STI, already held Certificate No. 3320 in the name of Gaviria. (EX 2(RM-1A))

5) The Commission also denied STI's application because STI had willfully misrepresented that it was not providing pay telephone service without a certificate. (TR 13, 21, 26; EX 2(RM-1A))

II. The First Complaint

6) In May 1995, the Florida Pay Telephone Association forwarded to the Commission a complaint from Liberty Tel., Inc., (Liberty) a Miami, Florida pay telephone service provider. (TR 19-20; EX 3(RM-2))

7) Liberty alleged that STI, although not certificated by the Commission, was soliciting location owners under contract with Liberty. (EX 3(RM-2))

8) Liberty alleged that Edwin Carranza, for STI, wrote seven letters to Liberty advising that STI had entered into contracts with seven location owners alleged to be under contract with Liberty and requesting that Liberty remove its telephones from the locations by a certain date. (TR 20-21; EX 3(RM-2))

9) Liberty stated that in response to the Carranza letters (see ¶7 above), Liberty, by letter and through its attorney, Jerry Kahn, advised each of the seven location owners solicited by STI of its contractual obligations under its contract with Liberty. (TR 23-24; EX 3(RM-2))

10) Liberty alleged in its complaint that it had checked three Gaviria pay telephones, namely 305 751 9087, 305 573 9320, and 305 691 9657, and found violations of Commission rules as follows:

- a) local calls were limited to 10 minutes for 25 cents;
- b) charges in excess of tariff for the Miami-Ft. Lauderdale extended calling plan;
- c) 0+ calls were not routed to the local exchange company;
- d) incoming calls were blocked;
- e) the 211 repair message was incomplete; and
- f) STI nameplates were on the telephones. (TR 22; Ex 3 (RM-

2))

### III. The Second Complaint

11) The Commission received a complaint on October 23, 1995, from Alberto Menendez of Alberto & Sons Meat Market, 2601 N.W. 95th Street, Miami, Florida, alleging that STI failed to return telephone calls concerning the out-of-service condition of two damaged pay telephones, failed to respond to messages requesting repair, failed to remove the telephones until five weeks after a request to do so, and failed to restore the premises to a reasonable condition after removing the telephones. (TR 25; EX 3A(RM-3))

### IV. Field Service Evaluation Criteria

12) The Commission staff conducts field service evaluations of pay telephones in Florida using a checklist consisting of 29 criteria as follows:

1. Telephone was not in service.
2. Telephone was not accessible to the physically handicapped.
3. Telephone number plate was not displayed.
4. Address of responsible party for refunds/repairs was not displayed.
5. Coin-free number for repairs/refunds did not work properly.
6. Current directory was not available.
7. Extended Area Service and Local calls were not \$.25 or less.
8. Wiring not properly terminated or in poor condition.
9. Address of pay telephone location was not displayed.
10. Instrument was not reasonably clean.
11. Enclosure was not adequate or free of trash.
12. Glass was chipped or broken.
13. Insufficient light to read instructions at night.

14. Name of provider (as it appears on the certificate) was not displayed.
15. Local Telephone Company responsibility disclaimer not displayed.
16. Clear and accurate dialing instructions were not displayed.
17. Statement of services not available was not displayed.
18. Automatic coin return function did not operate properly.
19. Incoming calls could not be received/or bell did not ring loud enough
20. Direct coin free service to the local operator did not work.
21. Direct coin free service to local Directory Assistance did not work.
22. Access to all available interexchange carriers was not available.
23. Coin free service to 911 did not work.
24. 911 center could verify the street address of the pay phone.
25. Transmission was not adequate or contained noise.
26. Did not comply with 0+ interLATA Toll rate cap - AT&T + opr chg + \$.25.
27. Combination of nickels and dimes did not operate correctly.
28. Dial pad did not function after call was answered.
29. 0+ area code + local number did not go to LEC operator as required. (TR 17; EX 1(RM-1))

V. The June 1995 Field Service Evaluations

13) As a result of the complaints, the Commission staff conducted four field service evaluations through its evaluator, Ralph King, beginning in June 1995. (TR 27)

14) Commission evaluator King conducted service evaluations of 23 Gaviria pay telephones in June 1995 and prepared service evaluation reports finding violations as enumerated in the following (TR 41,43):

1. Telephone 305 751 8327, evaluated June 7, 1995
  1. Telephone was not in service.
  3. Telephone number plate was not displayed.
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night.

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14. Name of provider (as it appears on the certificate) was not displayed. (TR 44; EX 7(RK-1))
2. Telephone 305 751 8523, evaluated June 7, 1995
    3. Telephone number plate was not displayed.
    4. Address of responsible party for refunds/repairs was not displayed.
    6. Current directory was not available.
    8. Wiring not properly terminated or in poor condition.
    9. Address of pay telephone location was not displayed.
    14. Name of provider (as it appears on the certificate) was not displayed.
    15. Local Telephone Company responsibility disclaimer not displayed.
    16. Clear and accurate dialing instructions were not displayed. (TR 45-46; EX 9(RK-2))
3. Telephone 305 633 9237, evaluated June 7, 1995
    3. Telephone number plate was not displayed.
    4. Address of responsible party for refunds/repairs was not displayed.
    5. Coin-free number for repairs/refunds did not work properly.
    6. Current directory was not available.
    7. Extended Area Service and Local calls were not \$.25 or less.
    9. Address of pay telephone location was not displayed.
    10. Instrument was not reasonably clean.
    15. Local Telephone Company responsibility disclaimer not displayed.
    16. Clear and accurate dialing instructions were not displayed.
    19. Incoming calls could not be received/or bell did not ring loud enough.
    22. Access to all available interexchange carriers was not available.
    29. 0+ area code + local number did not go to LEC operator as required. (TR 46-47; EX 11(RK-3))
4. Telephone 305 920 9902, evaluated June 9, 1995
    2. Telephone was not accessible to the physically handicapped.
    3. Telephone number plate was not displayed.

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4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.
  15. Local Telephone Company responsibility disclaimer not displayed.
  16. Clear and accurate dialing instructions were not displayed.
  19. Incoming calls could not be received/or bell did not ring loud enough.
  21. Direct coin free service to local Directory Assistance did not work.
  22. Access to all available interexchange carriers was not available. (TR 47-48; EX 12(RK-4))
5. Telephone 305 854 9684, evaluated June 7, 1995
3. Telephone number plate was not displayed.
  4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.
  14. Name of provider (as it appears on the certificate) was not displayed.
  15. Local Telephone Company responsibility disclaimer not displayed.
  16. Clear and accurate dialing instructions were not displayed.
  22. Access to all available interexchange carriers was not available.
  27. Combination of nickels and dimes did not operate correctly.
  29. 0+ area code + local number did not go to LEC operator as required. (TR 49-50; EX 14(RK-5))

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6. Telephone 305 854 9087, evaluated June 7, 1995

4. Address of responsible party for refunds/repairs was not displayed.
5. Coin-free number for repairs/refunds did not work properly.
6. Current directory was not available.
7. Extended Area Service and Local calls were not \$.25 or less.
9. Address of pay telephone location was not displayed.
14. Name of provider (as it appears on the certificate) was not displayed.
15. Local Telephone Company responsibility disclaimer not displayed.
16. Clear and accurate dialing instructions were not displayed.
27. Combination of nickels and dimes did not operate correctly.
29. 0+ area code + local number did not go to LEC operator as required. (TR 50-51; EX 15(RK-6))

7. Telephone 305 324 9023, evaluated June 7, 1995

6. Current directory was not available.
9. Address of pay telephone location was not displayed.
14. Name of provider (as it appears on the certificate) was not displayed.
15. Local Telephone Company responsibility disclaimer not displayed.
16. Clear and accurate dialing instructions were not displayed.
22. Access to all available interexchange carriers was not available.
29. 0+ area code + local number did not go to LEC operator as required. (EX 16(RK-7))

8. Telephone 305 350 9020, evaluated June 7, 1995

1. Telephone was not in service.
4. Address of responsible party for refunds/repairs was not displayed.
5. Coin-free number for repairs/refunds did not work properly.
6. Current directory was not available.
9. Address of pay telephone location was not displayed.
13. Insufficient light to read instructions at night.
14. Name of provider (as it appears on the certificate) was not displayed.

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20. Direct coin free service to the local operator did not work.
  22. Access to all available interexchange carriers was not available.
  23. Coin free service to 911 did not work.
  27. Combination of nickels and dimes did not operate correctly.
  29. 0+ area code + local number did not go to LEC operator as required. (EX 17(RK-8))
9. Telephone 305 350 9096, evaluated June 7, 1995
3. Telephone number plate was not displayed.
  4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night.
  14. Name of provider (as it appears on the certificate) was not displayed.
  15. Local Telephone Company responsibility disclaimer not displayed.
  16. Clear and accurate dialing instructions were not displayed.
  19. Incoming calls could not be received/or bell did not ring loud enough
  22. Access to all available interexchange carriers was not available.
  27. Combination of nickels and dimes did not operate correctly.
  29. 0+ area code + local number did not go to LEC operator as required. (EX 19(RK-9))
10. Telephone 305 573 8079, evaluated June 7, 1995
3. Telephone number plate was not displayed.
  4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.

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19. Incoming calls could not be received/or bell did not ring loud enough
  22. Access to all available interexchange carriers was not available.
  27. Combination of nickels and dimes did not operate correctly.
  29. 0+ area code + local number did not go to LEC operator as required. (EX 21(RK-10))
11. Telephone 305 751 8248, evaluated June 7, 1995
3. Telephone number plate was not displayed.
  4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night.
  14. Name of provider (as it appears on the certificate) was not displayed.
  19. Incoming calls could not be received/or bell did not ring loud enough
  22. Access to all available interexchange carriers was not available.
  29. 0+ area code + local number did not go to LEC operator as required. (EX 22(RK-11))
12. Telephone 305 751 8378, evaluated June 7, 1995
1. Telephone was not in service.
  3. Telephone number plate was not displayed.
  4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night.
  14. Name of provider (as it appears on the certificate) was not displayed.
  16. Clear and accurate dialing instructions were not
  19. Incoming calls could not be received/or bell did not ring loud enough

29. 0+ area code + local number did not go to LEC operator as required. (EX 24(RK-12))
13. Telephone 305 883 8281, evaluated June 6, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night.
  14. Name of provider (as it appears on the certificate) was not displayed.
  15. Local Telephone Company responsibility disclaimer not displayed. (EX 26(RK-13))
14. Telephone 305 261 9899, evaluated June 6, 1995
  3. Telephone number plate was not displayed.
  4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night.
  14. Name of provider (as it appears on the certificate) was not displayed.
  15. Local Telephone Company responsibility disclaimer not displayed.
  16. Clear and accurate dialing instructions were not displayed.
  19. Incoming calls could not be received/or bell did not ring loud enough (EX 28(RK-14))
15. Telephone 305 673 9337, evaluated June 8, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night.

22. Access to all available interexchange carriers was not available.
  29. 0+ area code + local number did not go to LEC operator as required. (EX 30(RK-15))
16. Telephone 305 673 9125, evaluated June 8, 1995
    4. Address of responsible party for refunds/repairs was not displayed.
    5. Coin-free number for repairs/refunds did not work properly.
    6. Current directory was not available.
    7. Extended Area Service and Local calls were not \$.25 or less.
    9. Address of pay telephone location was not displayed.
    29. 0+ area code + local number did not go to LEC operator as required. (EX 32(RK-16))
17. Telephone 305 221 9671, evaluated June 8, 1995
    4. Address of responsible party for refunds/repairs was not displayed.
    5. Coin-free number for repairs/refunds did not work properly.
    6. Current directory was not available.
    11. Enclosure was not adequate or free of trash.
    17. Statement of services not available was not displayed. 14. (EX 34(RK-17))
18. Telephone 305 751 9732, evaluated June 15, 1995
    4. Address of responsible party for refunds/repairs was not displayed.
    6. Current directory was not available.
    14. Name of provider (as it appears on the certificate) was not displayed.
    15. Local Telephone Company responsibility disclaimer not displayed.
    16. Clear and accurate dialing instructions were not displayed.
    22. Access to all available interexchange carriers was not available.
    29. 0+ area code + local number did not go to LEC operator as required. (EX 36(RK-18))
19. Telephone 305 751 9467, evaluated June 15, 1995
    4. Address of responsible party for refunds/repairs was not displayed.
    5. Coin-free number for repairs/refunds did not work properly.
    6. Current directory was not available.

7. Extended Area Service and Local calls were not \$.25 or less.
  14. Name of provider (as it appears on the certificate) was not displayed.
  19. Incoming calls could not be received/or bell did not ring loud enough
  21. Direct coin free service to local Directory Assistance did not work.
  22. Access to all available interexchange carriers was not available.
  29. 0+ area code + local number did not go to LEC operator as required. (EX 38(RK-19))
20. Telephone 305 751 9433, evaluated June 15, 1995
4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed.
  22. Access to all available interexchange carriers was not available.
  29. 0+ area code + local number did not go to LEC operator as required. (EX 40(RK-20))
21. Telephone 305 751 9087, evaluated June 15, 1995
3. Telephone number plate was not displayed.
  4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night.
  14. Name of provider (as it appears on the certificate) was not displayed.
  15. Local Telephone Company responsibility disclaimer not displayed.
  16. Clear and accurate dialing instructions were not displayed.
  17. Statement of services not available was not displayed.
  19. Incoming calls could not be received/or bell did not ring loud enough

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22. Access to all available interexchange carriers was not available.
  29. 0+ area code + local number did not go to LEC operator as required. (EX 42(RK-21))
22. Telephone 305 861 9041, evaluated June 12, 1995
4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  14. Name of provider (as it appears on the certificate) was not displayed.
  15. Local Telephone Company responsibility disclaimer not displayed.
  16. Clear and accurate dialing instructions were not displayed.
  19. Incoming calls could not be received/or bell did not ring loud enough
  22. Access to all available interexchange carriers was not available.
  27. Combination of nickels and dimes did not operate correctly.
  29. 0+ area code + local number did not go to LEC operator as required. (EX 44(RK-22))
23. Telephone 305 685 9342, evaluated June 14, 1995
4. Address of responsible party for refunds/repairs was not displayed.
  5. Coin-free number for repairs/refunds did not work properly.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.
  14. Name of provider (as it appears on the certificate) was not displayed.
  15. Local Telephone Company responsibility disclaimer not displayed.
  16. Clear and accurate dialing instructions were not displayed. (EX 46(RK-23))

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15) The Commission staff's June 1995 evaluation identified 225 violations as follows:

Address of responsible party for repairs/refunds not displayed	23
Directory unavailable	23
Certificated providers name not displayed	23
Free number for repairs/refunds did not work	20
Location address not displayed	18
EAS/local calls not \$.25 or less	16
0+ calls not routed to LEC operator	16
Coin-free access to all available IXCs not provided	15
LEC disclaimer not displayed	12
Dialing instructions not displayed	11
Telephone number not displayed	11
Incoming calls could not be received; bell not loud enough	9
Insufficient lighting	9
Nickels and dimes did not work	6
Telephone not in service	3
Free access to directory assistance did not work	2
Statement of services unavailable not displayed	2
Wiring improperly terminated/in poor condition	1
Telephone not clean	1
Telephone inaccessible to physically handicapped	1
Enclosure obstructed	1
0- operator access inoperative	1

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Street address not verified by 911  
(Tr 27-28; EX 4(RM-4))

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16) The Commission staff advised Gaviria of the June 1995 service evaluation results on June 14, 1995, by regular mail (Files Nos. TE793.9501, TE793.9502), on July 11, 1995, by certified mail (Files Nos. TE793.9501, TE793.9502), on July 12, 1995, by regular mail (File No. TE793.9503), and on August 4, 1995, by certified mail (File No. TE793.9503), each time requiring a response within 15 days and corrective measures. (TR 28-29; EX 98A(VC-1); EX 98B(VC-2); EX 98C(VC-3); EX 98D(VC-4); EX 99(VC-5); EX 100(VC-6))

17) Gaviria did not respond to the June 14, 1995 and July 12, 1995, Commission staff service evaluation letters, or the July 11, 1995, and August 4, 1995, follow-up Commission staff service evaluation letters. (TR 30)

18) On August 9, 1995, the Commission staff transmitted the June 14, 1995, July 11, 1995, July 12, 1995, and August 4, 1995, Commission service evaluation letters to Gaviria by facsimile, and advised Gaviria that it appeared to be in violation of the Commission's rule to report changes in circumstances. (TR 30; 64-65; EX 101(VC-7))

19) On August 10, 1995, the Commission staff advised counsel for Gaviria, Brian L. Fink, that it had transmitted all of the service evaluation letters to Gaviria by facsimile and that Gaviria had stated it would respond by August 21, 1995. (TR 65; EX 102(VC-8))

20) On August 10, 1995, the Commission staff also advised Gaviria counsel that it would consider recommending that the Commission initiate a show cause proceeding if Gaviria's response was not satisfactory and timely. (TR 65; EX 102(VC-8))

21) On August 14, 1995, Gaviria responded to File No. TE793.9501. (TR 30; EX 103(VC-9))

22) Gaviria's response to File No. TE793.9501 consisted of 56 admissions; 45 claims of vandalism without substantiation; 14 denials without substantiation; and 4 claims that the line was going to be transferred. The Commission staff's assessment of Gaviria's response to File No. TE793.9501 was that it was unsatisfactory, (TR 30, 67-68; EX 134(VC-39))

23) On August 21, 1995, Gaviria responded to File No. TE793.9503. (TR 68; EX 104(VC-10))

24) Gaviria's response to File No. TE793.9503 consisted of 3 admissions; 42 denials without substantiation; and 1 claim that the line was going to be transferred. The Commission staff's assessment of Gaviria's response to File No. TE793.9503 was that it was unsatisfactory. (TR 69; EX 135(VC-40)<sup>1</sup>)

25) On September 6, 1995, the Commission staff advised counsel for Gaviria that, according to Southern Bell, the four lines Gaviria claimed were going to be transferred in its response to File No. TE793.9501 were still assigned to Gaviria's certificate. (TR 69-70; EX 105(VC-11))

26) On September 6, 1995, the Commission staff also advised counsel for Gaviria that Gaviria in its response to File No. TE793.9501 had misinterpreted the Commission's directory availability rule, that it had erroneously responded to the Commission's directory assistance access rule, and that telephone 305 751 9087 did not have required signage. (TR 69-70; EX 105(VC-11))

27) On September 6, 1995, the Commission staff also advised counsel for Gaviria of the procedure required to obtain certification for STI. (TR 69; EX 105(VC-11))

#### VI. The September 1995 Field Service Evaluation

28) In September 1995, Commission evaluator King returned to Miami and evaluated 39 Gaviria pay telephones, 19 of which had been evaluated in June 1995. (TR 30)

29) Commission evaluator King prepared service evaluation reports finding violations as enumerated in the following (TR 41, 43):

1. Telephone 305 751 8327, re-evaluated September 14, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 8(RK-1A))
2. Telephone 305 751 8523, re-evaluated September 14, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.

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<sup>1</sup>Erroneously described as Analysis of Gaviria's Response to File TE793.9503 September 1995 Evaluations.

13. Insufficient light to read instructions at night.  
(EX 10(RK-2A))
  
3. Telephone 305 920 9902, re-evaluated September 11, 1995
  2. Telephone was not accessible to the physically handicapped.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.
  11. Enclosure was not adequate or free of trash.
  19. Incoming calls could not be received/or bell did not ring loud enough. (EX 13(RK-4A))
  
4. Telephone 305 350 9020, re-evaluated September 14, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  8. Wiring not properly terminated or in poor condition.
  9. Address of pay telephone location was not displayed.
  24. 911 center could verify the street address of the pay phone. (EX 18(RK-8A))
  
5. Telephone 305 350 9096, re-evaluated September 14, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 20(RK-9A))
  
6. Telephone 305 751 8248, re-evaluated September 13, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 23(RK-11A))
  
7. Telephone 305 751 8378, re-evaluated September 14, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 25(RK-12A))
  
8. Telephone 305 883 8281, re-evaluated September 15, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.

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7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night. (EX 27(RK-13A))
9. Telephone 305 261 9899, re-evaluated September 15, 1995
6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night.
  19. Incoming calls could not be received/or bell did not ring loud enough. (EX 29(RK-14A))
10. Telephone 305 673 9337, re-evaluated September 13, 1995
4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 31(RK-15A))
11. Telephone 305 673 9125, re-evaluated September 13, 1995
4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 33(RK-16A))
12. Telephone 305 221 9671, re-evaluated September 15, 1995
6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less. (EX 35(RK-17A))
13. Telephone 305 751 9732, re-evaluated September 13, 1995
4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  9. Address of pay telephone location was not displayed. (EX 37(RK-18A))
14. Telephone 305 751 9467, re-evaluated September 14, 1995
4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  9. Address of pay telephone location was not displayed.
  20. Direct coin free service to the local operator did not work. (EX 39(RK-19A))

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15. Telephone 305 751 9433, re-evaluated September 14, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  9. Address of pay telephone location was not displayed. (EX 41(RK-20A))
  
16. Telephone 305 751 9087, re-evaluated September 13, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  13. Insufficient light to read instructions at night. (EX 43(RK-21A))
  
17. Telephone 305 861 9041, re-evaluated September 12, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  27. Combination of nickels and dimes did not operate correctly. (EX 45(RK-22A))
  
18. Telephone 305 685 9342, re-evaluated September 15, 1995
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  9. Address of pay telephone location was not displayed. (EX 47(RK-23A))
  
19. Telephone 305 751 9848, evaluated September 13, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  19. Incoming calls could not be received/or bell did not ring loud enough. (EX 48(RK-24))
  
20. Telephone 305 751 8984, evaluated September 13, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 49(RK-25))
  
21. Telephone 305 751 9763, evaluated September 13, 1995
  2. Telephone was not accessible to the physically handicapped.
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.

14. Name of provider (as it appears on the certificate) was not displayed. (EX 50(RK-26))
  
22. Telephone 305 751 9860, evaluated September 13, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  19. Incoming calls could not be received/or bell did not ring loud enough.
  24. 911 center could verify the street address of the pay phone. (EX 51(RK-27))
  
23. Telephone 305 751 9992, evaluated September 13, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  19. Incoming calls could not be received/or bell did not ring loud enough. (EX 52(RK-28))
  
24. Telephone 305 573 9320, evaluated September 12, 1995
  2. Telephone was not accessible to the physically handicapped.
  6. Current directory was not available.
  13. Insufficient light to read instructions at night.
  14. Name of provider (as it appears on the certificate) was not displayed.
  15. Local Telephone Company responsibility disclaimer not displayed.
  16. Clear and accurate dialing instructions were not displayed.
  17. Statement of services not available was not displayed.
  19. Incoming calls could not be received/or bell did not ring loud enough. (EX 53(RK-29))
  
25. Telephone 305 867 9725, evaluated September 12, 1995
  3. Telephone number plate was not displayed.
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night.
  14. Name of provider (as it appears on the certificate) was not displayed.
  19. Incoming calls could not be received/or bell did not ring loud enough. (EX 54(RK-30))

26. Telephone 305 868 9167, evaluated September 12, 1995
  3. Telephone number plate was not displayed.
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night.
  14. Name of provider (as it appears on the certificate) was not displayed.
  15. Local Telephone Company responsibility disclaimer not displayed.
  19. Incoming calls could not be received/or bell did not ring loud enough. (EX 55(RK-31))
  
27. Telephone 305 868 9727, evaluated September 12, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  9. Address of pay telephone location was not displayed.
  13. Insufficient light to read instructions at night.
  19. Incoming calls could not be received/or bell did not ring loud enough.
  24. 911 center could verify the street address of the pay phone. (EX 56(RK-32))
  
28. Telephone 305 868 9823, evaluated September 12, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  13. Insufficient light to read instructions at night.
  19. Incoming calls could not be received/or bell did not ring loud enough.
  24. 911 center could verify the street address of the pay phone. (EX 57(RK-33))
  
29. Telephone 305 868 9357, evaluated September 12, 1995
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  9. Address of pay telephone location was not displayed.
  19. Incoming calls could not be received/or bell did not ring loud enough.
  24. 911 center could verify the street address of the pay phone. (EX 58(RK-34))
  
30. Telephone 305 751 9906, evaluated September 14, 1995

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2. Telephone was not accessible to the physically handicapped.
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 59(RK-35))
31. Telephone 305 751 9778, evaluated September 14, 1995
2. Telephone was not accessible to the physically handicapped.
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 60(RK-36))
32. Telephone 305 751 8906, evaluated September 14, 1995
4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 61(RK-37))
33. Telephone 305 573 9876, evaluated September 14, 1995
4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 62(RK-38))
34. Telephone 305 691 9068, evaluated September 15, 1995
4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 63(RK-39))
35. Telephone 305 694 9415, evaluated September 15, 1995
4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available. (EX 64(RK-40))
36. Telephone 305 693 9451, evaluated September 15, 1995
4. Address of responsible party for refunds/repairs was not displayed. (EX 65(RK-41))
37. Telephone 305 694 9415, evaluated September 15, 1995
4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  9. Address of pay telephone location was not displayed.

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13. Insufficient light to read instructions at night.
  24. 911 center could verify the street address of the pay phone. (EX 66(RK-42))
- 
38. Telephone 305 883 9851, evaluated September 15, 1995
    2. Telephone was not accessible to the physically handicapped.
    6. Current directory was not available.
    7. Extended Area Service and Local calls were not \$.25 or less.
    9. Address of pay telephone location was not displayed. (EX 67(RK-43))

30) The Commission staff's September 1995 evaluation identified 146 violations as follows:

Directory unavailable	37
Address of responsible party for repairs/refunds not displayed	32
Location address not displayed	15
Certificated providers name not displayed	12
Incoming calls could not be received; bell not loud enough	11
Insufficient lighting	10
Telephone inaccessible to physically handicapped 0+ calls not routed to LEC operator	6
EAS/local calls not \$.25 or less	6
0- operator access inoperative	6
Telephone number not displayed	2
LEC disclaimer not displayed	2
Telephone not in service	1
Wiring improperly terminated/in poor condition	1
Nickels and dimes did not work	1
Enclosure obstructed	1
Dialing instructions not displayed	1
Statement of services unavailable not displayed	1

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0- operator access inoperative

1

(TR 31; EX 4(RM-4))

31) The Commission staff advised Gaviria of the September 1995 service evaluation results on September 20, 1995, by regular mail (Files Nos. TE793.9504, TE793.9505, TE793.9506, TE793.9507), requiring a response within 15 days and corrective measures. (TR 31; EX 107(VC-13); EX 108(VC-14); EX 109(VC-15); EX 111(VC-16))

32) On October 2, 1995, counsel for Gaviria wrote to Commission staff stating that Gaviria had been unable to discover the majority of violations upon inspection and that Gaviria believed the evaluator was intentionally falsifying or misstating the condition of its telephones since it had received so many unmeritorious and blatantly erroneous service evaluations. (TR 72-73; EX 112(VC-17))

33) In his letter to Commission staff, counsel for Gaviria suggested a meeting with the evaluator and his supervisor. (TR 73; EX 112(VC-17))

34) It was left for counsel for Gaviria to arrange for the meeting, but he did not do so. (TR 73-74)

#### VII. The November 1995 Field Service Evaluations

35) In November 1995, two other Commission evaluators conducted a follow-up evaluation of two Gaviria telephones, one of which had been previously evaluated. (TR 32)

36) The Commission staff's November 1995 evaluation identified four violations as follows:

Directory unavailable	2
Address of responsible party for repairs/refunds not displayed	2

(TR 32; EX 4(RM-4))

37) The Commission staff advised Gaviria of the November 1995 service evaluation results on November 14, 1995, by regular mail (File No. TE793.9508), requiring a response within 15 days and corrective measures. (TR 32; EX 113(VC-18))

38) On November 26, 1995, Gaviria timely responded to File No. TE793.9508. (TR 32; EX 114(VC-19))

39) The Commission staff's assessment of Gaviria's response to File No. TE793.9508 was that it was unsatisfactory, in that it consisted of denials without substantiation. (TR 32-33,75; EX 138(VC-41))

#### VIII. The Show Cause Proceeding

40) On February 8, 1996, the Commission staff filed a recommendation that the Commission order Gaviria to show cause why it should not have its certificate revoked or be fined for violations of Commission rules. (TR 33; EX 5(RM-5))

41) On March 20, 1996, the Commission issued Order No. PSC-96-0388-FOF-TC, in which it ordered Gaviria to show cause why it not should be fined or why the Commission should not revoke its certificate, Certificate No. 3320, for violations of Rules 25-24.512 and 25-24.515, Florida Administrative Code. (TR 10, 30, 33; EX 2(RM-1A))

42) On April 9, 1996, Gaviria timely filed an answer and petition to initiate formal proceedings before the Commission. (TR 30, 34; EX 6(RM-6))

#### IX. The March 1996 Field Service Evaluations

43) In March 1996, Commission evaluator King returned to Miami to reevaluate Gaviria telephone 305 861 9041, which had been evaluated in June and September 1995, with 11 and 3 violations respectively. (TR 35)

44) Commission evaluator King prepared a service evaluation report finding violations as enumerated in the following (TR 41, 43):

1. Telephone 305 861 9041, evaluated March 15, 1996
  4. Address of responsible party for refunds/repairs was not displayed.
  6. Current directory was not available.
  7. Extended Area Service and Local calls were not \$.25 or less.
  14. Name of provider (as it appears on the certificate) was not displayed.
  15. Local Telephone Company responsibility disclaimer not displayed.
  26. Did not comply with 0+ interLATA Toll rate cap - AT&T + opr chg + \$.25.

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29. 0+ area code + local number did not go to LEC operator as required. (EX 68(RK-45))

45) The Commission staff's March 1996 evaluation identified 6 violations as follows:

Directory unavailable	1
Address of responsible party for repairs/refunds not displayed	1
LEC disclaimer not displayed	1
Certificated providers name not displayed	1
Noncompliance 0+ interLATA toll non-coin call rate cap	1
0+ call not routed to LEC operator	1

(TR 35; EX 4(RM-4))

46) The Commission staff advised Gaviria of the March 1996 service evaluation results on March 20, 1996, by regular mail (File No. TE '93.9601), requiring a response within 15 days and corrective measures. (TR 35; EX 115(VC-20))

47) On March 31, 1996, Gaviria timely responded to File No. TE793.9601. (TR 35; EX 117(VC-21))

48) The Commission staff's assessment of Gaviria's response to File No. TE793.9601 was that it was unsatisfactory, in that it consisted of denials without substantiation. (TR 35, 76-77; EX 137(VC-43))

X. The October 1996 Field Service Evaluations

49) In October 1996, Commission evaluator Chester Wade went to Miami to reevaluate 23 Gaviria telephones in a fifth field service evaluation of Gaviria telephones. (TR 35-36, 79)

50) Commission evaluator Wade prepared service evaluation reports finding violations as enumerated in the following (TR 56-57):

1. Telephone 305 633 9237, evaluated October 21, 1996
  1. Telephone was not in service.
  3. Telephone number plate was not displayed.

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6. Current directory was not available.
  9. Address of pay telephone location was not displayed.
  14. Name of provider (as it appears on the certificate) was not displayed.
  19. Incoming calls could not be received/or bell did not ring loud enough. (EX 70(CW-1))
2. Telephone 305 751 9433, evaluated October 22, 1996
    6. Current directory was not available.
    9. Address of pay telephone location was not displayed.
    11. Enclosure was not adequate or free of trash.
    14. Name of provider (as it appears on the certificate) was not displayed. (EX 71(CW-2))
3. Telephone 305 691 8180, evaluated October 22, 1996
    2. Telephone was not accessible to the physically handicapped.
    6. Current directory was not available.
    14. Name of provider (as it appears on the certificate) was not displayed. (EX 72(CW-3))
4. Telephone 305 868 9357, evaluated October 22, 1996
    6. Current directory was not available.
    9. Address of pay telephone location was not displayed.
    14. Name of provider (as it appears on the certificate) was not displayed.
    24. 911 center could verify the street address of the pay phone. (EX 73(CW-4))
5. Telephone 305 751 9467, evaluated October 22, 1996
    6. Current directory was not available.
    14. Name of provider (as it appears on the certificate) was not displayed.
    20. Direct coin free service to the local operator did not work. (EX 74(CW-5))
6. Telephone 305 854 9087, evaluated October 21, 1996
    6. Current directory was not available.
    14. Name of provider (as it appears on the certificate) was not displayed. (EX 75(CW-6))
7. Telephone 305 751 9732, evaluated October 22, 1996
    6. Current directory was not available.
    14. Name of provider (as it appears on the certificate) was not displayed. (EX 76(CW-7))

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8. Telephone 305 751 8327, evaluated October 22, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 77(CW-8))
9. Telephone 305 751 8900, evaluated October 22, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 78(CW-9))
10. Telephone 305 751 9906, evaluated October 22, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 79(CW-10))
11. Telephone 305 751 9778, evaluated October 22, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 80(CW-11))
12. Telephone 305 751 8378, evaluated October 22, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 81(CW-12))
13. Telephone 305 751 8378, evaluated October 22, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 82(CW-13))
14. Telephone 305 673 9125, evaluated October 22, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 83(CW-14))
15. Telephone 305 673 9337, evaluated October 22, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 84(CW-15))
16. Telephone 305 861 9041, evaluated October 22, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 85(CW-16))
17. Telephone 305 868 9823, evaluated October 22, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 86(CW-17))

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18. Telephone 305 868 9727, evaluated October 22, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 87(CW-18))
19. Telephone 305 854 9684, evaluated October 21, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 88(CW-20))
20. Telephone 305 693 9451, evaluated October 21, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 89(CW-21))
21. Telephone 305 694 9415, evaluated October 21, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 90(CW-22))
22. Telephone 305 691 9068, evaluated October 21, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed. (EX 91(CW-23))
23. Telephone 305 751 9087, evaluated October 21, 1996
  6. Current directory was not available.
  14. Name of provider (as it appears on the certificate) was not displayed.
  20. Direct coin free service to the local operator did not work. (EX 92(CW-24))

51) The Commission staff's October 1996 evaluation identified 58 violations as follows:

Directory unavailable	23
Certificated provider's name not displayed	23
Location address not displayed	3
0- operator access inoperative LEC disclaimer not displayed	2
0- operator access inoperative	2
Telephone not in service	1
Telephone inaccessible to physically handicapped	1

Telephone number not displayed	1
Enclosure obstructed	1
Incoming calls could not be received/bell did not ring loud enough	1

(TR 36; EX 4(RM-4))

52) The Commission staff advised Gaviria of the October 1996 service evaluation results on November 6, 1996, by regular mail (Files Nos. TE793.9603, TE793.9604), requiring a response within 15 days and corrective measures. (TR 36; EX 138(VC-44A); EX 139(VC-44B))

53) On November 20, 1996, Gaviria timely responded to Files Nos. TE793.9603 and TE793.9604. (TR 36; EX 138(VC-44A); EX 139(VC-44B))

54) Gaviria's response to Files Nos. TE793.9603 and TE793.9604 consisted of 31 denials without substantiation; 23 claims of vandalism without substantiation, 2 admissions, and 1 inaccurate claim of non-ownership. The Commission staff's assessment of Gaviria's response to Files Nos. TE793.9603 and TE793.9604 was that it was unsatisfactory. (TR 37,79; EX 140(VC-45))

#### XI. Field Service Evaluation Results Analyzed and Summarized

55) The Commission staff performed five separate field service evaluations on 38 Gaviria pay telephones, finding a total of 439<sup>2</sup> violations. (TR 37)

56) Of the total of 439 Gaviria pay telephone violations found by Commission evaluators, 88, or 20 per cent, were repeated violations. (TR 80; EX 118(VC-22))

57) The Commission evaluators evaluated 21 Gaviria pay telephones twice, 9 Gaviria pay telephones three times and 1 Gaviria pay telephone four times. (TR 80; EX 118(VC-22))

58) In the course of the five field service evaluations, Commission evaluators found an average number of violations per telephone ranging from 2.0 to 11.0. (TR 80; EX 118(VC-22))

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<sup>2</sup>Witness Moses testified that it was his belief the number of violations in total was 427. (TR 37) Witness Cordiano testified the number was 439. (TR 80)

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59) The Commission staff analyzed the violations for frequency and repetitiveness as follows:

	Violations	
	<u>Initial</u>	<u>Repeated</u>
1. Telephone was not in service (Rule 24.515(11)(a), F.A.C.).	5	0
2. Telephone was not accessible to the physically handicapped (Rule 24.515(13), F.A.C.)	7	1
3. Telephone number plate was not displayed (Rule 24.515(13), F.A.C.).	14	0
4. Address of responsible party for refunds/repairs was not displayed ((Rule 24.515(5), F.A.C.).	42	16
5. Coin-free number for repairs/refunds did not work properly (Rule 24.515(5), F.A.C.).	20	0
6. Current directory was not available ((Rule 24.515(11), F.A.C.).	45	41
7. Extended Area Service and Local calls were not \$.25 or less (Rule 24.515(1)(a), F.A.C.).	18	4
8. Wiring not properly terminated or in poor condition (Rule 24.515(13), F.A.C.).	2	0
9. Address of pay telephone location was not displayed (Rule 24.515(13), F.A.C.).	29	7
10. Instrument was not reasonably Clean (Rule 24.515(13), F.A.C.).	1	0
11. Enclosure was not adequate or free of trash (Rule 24.515(13), F.A.C.).	3	0
13. Insufficient light to read instructions at night (Rule 24.515(1), F.A.C.).	16	3
14. Name of provider (as it appears on the certificate) was not displayed (Rule 24.515(5), F.A.C.).	48	11
15. Local Telephone Company responsibility disclaimer not displayed		

	(Rule 24.515(5), F.A.C.).	15	0
16.	Clear and accurate dialing instructions were not displayed (Rule 24.515(5), F.A.C.).	12	0
17.	Statement of services not available was not displayed (Rule 24.515(13), F.A.C.).	3	0
19.	Incoming calls could not be received/or bell did not ring loud enough (Rule 24.515(8), F.A.C.).	20	1
20.	Direct coin free service to the local operator did not work (Rule 24.515(4), F.A.C.).	3	1
21.	Direct coin free service to local Directory Assistance did not work.	2	0
22.	Access to all available interexchange carriers was not available (Rule 24.515(6), F.A.C.).	15	0
24.	911 center could not verify the street address of the pay phone (Rule 24.515(3), F.A.C.).	7	2
26.	Did not comply with 0+ interLATA Toll rate cap - AT&T + opr chg + \$.25 (Rule 24.515(10), F.A.C.).	1	0
27.	Combination of nickels and dimes did not operate correctly (Rule 24.515(11)(a), F.A.C.).	6	1
29.	0+ area code + local number did not go to LEC operator as required (Rule 24.515(7), F.A.C.).	17	0

(TR 81-85; EX 119(VC-24) through 131(VC-36)

### XIII. Unsupported Gaviria Representations

60) Contrary to its assertions, Gaviria placed no orders for telephone directories with BellSouth Telecommunications in the period June 6, 1995, to September 15, 1996. (TR 86; EX 132(VC-37); EX 106(VC-12))

61) Gaviria transferred telephones 305 920 9902, 305 883 8281, 305 262 9899, 305 221 9671 and 305 685 9342 only on September 18, 1995, following the Commission's September 1995

evaluation, and even then without correcting the violations as it had claimed. (TR 87; EX 133(VC-38); EX 106(VC-12))

### XIII. Commission Penalty Precedence

62) The Commission revokes approximately 90 certificates of public convenience and necessity each year for violations as comparatively minor as a failure to pay regulatory assessment fees or to notify the Commission of a change of location. Therefore, to revoke Gaviria's certificate for its violation of the Commission's pay telephone service standards more than 425 times, many of them repeated, on 38 telephones over a period of 16 months would be proportionate to the offense. (TR 38-39)

### CONCLUSIONS OF LAW

63) The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

64) The Commission has the burden to prove its case by clear and convincing evidence. Ferris v. Turlington, 510 So.2d 292, (Fla. 1987)

65) Chapter 364, Florida Statutes sets forth the Commission's authority to regulate telecommunications companies, including pay telephone service providers.

66) Section 364.01(4) provides that the Commission shall exercise its exclusive jurisdiction in order to:

(a) Protect the public health, safety and welfare by ensuring that basic telecommunications services are available to all consumers in the state at reasonable and affordable prices.

67) Section 364.3375, Florida Statutes, provides that no person shall provide telephone service without first obtaining from the commission a certificate of public convenience and necessity to provide such service.

68) Section 364.285, Florida Statutes, provides that the commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter which 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 this chapter a penalty for each offense of not more than \$25,000 . . . or the

commission may, for any such violation, amend, suspend, or revoke any certificate issued by it.

69) Chapter 25-24, Part XI, Florida Administrative Code, sets forth rules governing the regulation of pay telephone service providers.

70) Rule 25-24.511(4), Florida Administrative Code, provides that the Commission will grant a certificate if the grant is in the public interest and that one certificate per applicant will be granted unless granting additional certificates is shown to be in the public interest.

71) Rule 25-24.514(1)(b), Florida Administrative Code, provides that the Commission may cancel a company's certificate for violation of Commission rules or orders or violation of Florida Statutes.

72) Rule 25-24.515(1), Florida Administrative Code, provides that pay stations shall be lighted during the hours of darkness when light from other sources is not adequate to read instructions and use the instrument.

73) Rule 25-24.515(3), Florida Administrative Code, provides that each telephone station shall permit access to 911 without requiring the use of a coin, paper money or a credit card.

74) Rule 25-24.515(4), Florida Administrative Code, provides that each station shall, without charge, permit access to local directory assistance and the telephone number of any person responsible for repairs or refunds.

75) Rule 25-24.515(5), Florida Administrative Code, provides that each telephone station shall be equipped with a legible sign, card or plate of reasonable permanence which shall identify the following: telephone number and location address of such station, name of the certificate holder and the party responsible for repairs and refunds, address of responsible party, free phone number of responsible party, clear dialing instructions (including notice of the lack of availability of local or toll services), and, where applicable, a statement that the phone is not maintained by the local exchange company.

76) Rule 25-24.515(6), Florida Administrative Code, provides that each telephone station which provides access to any interexchange company shall provide coin free access to all locally available interexchange companies.

77) Rule 25-24.515(7), Florida Administrative Code, provides that all intraLATA calls, including operator service calls, shall be routed to the local exchange company.

78) Rule 25-24.515(8), Florida Administrative Code, provides that each telephone station shall allow incoming calls to be received, with the exception of confinement facilities, hospitals and schools, and at locations specifically exempted by the Commission.

79) Rule 25-24.515(10), Florida Administrative Code, provides that the charge for calls may not exceed the rates shown in the local exchange company Pay Telephone Access Tariff.

80) Rule 25-24.515(11)(a), Florida Administrative Code, provides that each pay telephone service company shall make all reasonable efforts to minimize the extent and duration of interruptions of service.

81) Rule 25-24.515(12), Florida Administrative Code, provides that where there are fewer than three telephones located in a group, a directory for the entire local calling area shall be maintained at each station. Where there are three or more telephones located in a group, a directory for the entire local calling area shall be maintained at every other station. However, where telephone stations are fully enclosed, a directory shall be maintained at each station.

82) Rule 25-24.515(13), Florida Administrative Code, provides that normal maintenance and coin collection activity shall include a review of the cleanliness of each station and reasonable efforts shall be made to ensure that 95% of all stations are clean and free of obstructions.

83) Rule 25-24.515(14), Florida Administrative Code, provides that each telephone station shall conform to the American National Standards Specifications for Making Buildings and Facilities Accessible and Usable by Physically Handicapped People.

84) The Commission has shown by clear and convincing evidence that Gaviria has conducted pay telephone services, in the period beginning June 1995 through October 1996, in violation of subparts (1), (3), (4), (5), (6), (7), (8), (10), (11)(a), (12), (13), and (14) of Rule 25-24.515, Florida Administrative Code, setting forth performance standards for the provision of pay telephone service.

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85) The Commission has proceeded lawfully under Section 364.285, Florida Statutes, in ordering Gaviria to show cause why it should not be penalized under Section 364.285, Florida Statutes, for violation of the Commission's rules governing pay telephone service standards.

86) Gaviria has willfully violated Rule 25-24.515, Florida Administrative Code.

87) By its conduct of its pay telephone services, Gaviria has shown that it is not in the public interest that it be permitted to continue to hold Certificate No. 3320.

88) The Commission is authorized to revoke Gaviria's Certificate No. 3320 under Section 364.285, Florida Statutes, and Rule 25-24.514(1)(b), Florida Administrative Code, upon a finding of willful violation of the Commission's rules.

89) The severity of Gaviria's violation of the Commission's rules is sufficient to justify that its Certificate No. 3320 be revoked.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a Final Order be entered finding that Wlberth Gaviria has willfully violated Rule 25-24.515, Florida Administrative Code. It is further

RECOMMENDED that a Final Order be entered revoking Wlberth Gaviria's certificate of public convenience and necessity, Certificate No. 3320.

DONE AND ENTERED this \_\_\_\_ day of \_\_\_\_\_, 1997, in Tallahassee, Leon County, Florida.

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