

RECEIVED

NOV - 6 1997  
11:50  
FPSC - Records/Reporting

Talbott  
Vandiver

*WJ*  
*[Signature]*

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

MEMORANDUM

November 6, 1997

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

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *P* *MCB*  
DIVISION OF COMMUNICATIONS (LEWIS) *C. Lewis*

RE: DOCKET NO. 971306-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST HEARTLINE COMMUNICATIONS, INC. FOR VIOLATION OF RULE 25-4.043, RESPONSE TO COMMISSION STAFF INQUIRIES; RULE 25-4.019, RECORDS AND REPORTS IN GENERAL AND RULE 25-24.480(2) (a) (b), RECORDS & REPORTS; RULES INCORPORATED FLORIDA ADMINISTRATIVE CODE.

AGENDA: 11/18/97 - REGULAR AGENDA - DECISION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\971306-TI.RCM

CASE BACKGROUND

On January 13, 1997, staff notified Heartline Communications, Inc., (Heartline) that the company's quality of service would be evaluated pursuant to Rule 25-21.026, Florida Administrative Code. Regular bills were requested for the calls. Attachment 1. To facilitate the evaluation, the company furnished a calling card and PIN number for 0+ test calls. Staff made test calls on February 7, 1997, in order to evaluate timing and billing, call completions and the transmission quality of the service provided by Heartline.

On May 12, 1997, Staff notified Heartline by letter directed to company representative, Ms. Gloria Cross, that the required billing information for the test calls had not been received. The company did not respond. On June 5, 1997, staff requested the information by certified mail again directed to Ms. Cross. The company remained unresponsive and staff repeated its request for

DOCUMENT NUMBER-DATE

11459 NOV-66

FPSC-RECORDS/REPORTING

DOCKET NO. 971306  
DATE: November 6, 1997

the billing information during a telephone conversation with Ms. Cross on July 17, 1997. Staff requested the information a fourth time on July 29, 1997, by means of another certified letter. On October 3, 1997, staff attempted to contact the company by telephone, but discovered that the telephone number was no longer in service with no forwarding information available. Staff has not received the billing information or an explanation for the company's failure to provide it as of the date of this recommendation.

The Commission granted Heartline a certificate to provide interexchange telecommunications services in Order No. PSC-93-1568-FOF-TI, issued October 26, 1993. On September 5, 1996, the Commission issued Order No. PSC-96-1123-AS-TI, in which it approved the company's offer of settlement concerning numerous complaints of unauthorized carrier changes. The settlement consisted of a settlement payment in the amount of \$50,000, as well as a number of provisions limiting the company's marketing activity. On January 7, 1997, the Commission issued Order No. PSC-97-0030-FOF-TI, approving transfer of control from Heartline to Total National Telecommunications, Inc. (TNT). Staff attempted to contact TNT by telephone, but discovered that its telephone number was also no longer in service. On September 30, 1997, staff learned that TNT filed a petition for liquidation under Chapter 7 of the Bankruptcy Code on September 12, 1997, in U.S. Bankruptcy Court, Southern District of Texas.

This recommendation addresses whether the Commission should order Heartline to show cause why it should not be penalized for apparent violations of Commission rules.

DOCKET NO. 971306  
DATE: November 6, 1997

### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission order Heartline Communications, Inc., to show cause why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries; \$15,000 for apparent violation of Rule 25-4.019, Florida Administrative Code, Records and Reports in General; and \$500 for apparent violation of Rules 25-24.480(2)(a) and (b), Records & Reports; Rules Incorporated, or have its Certificate No. 3494 canceled?

**RECOMMENDATION:** Yes. The Commission should require Heartline to show cause in writing within 20 days of the issuance of the Commission's order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries; \$15,000 for apparent violation of Rule 25-4.019, Florida Administrative Code, Records and Reports in General; and \$500 for apparent violation of Rules 25-24.480(2)(a) and (b), Records & Reports; Rules Incorporated, or have its Certificate No. 3494 canceled. If Heartline fails to respond to the Commission's show cause order, the fines should be deemed assessed. If the fines are not paid within five business days of the expiration of the show cause response period, Heartline's certificate should be canceled. If the fines are paid, they should be forwarded to the Office of the Comptroller for deposit in the Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (LEWIS, PELLEGRINI)

**STAFF ANALYSIS:** Rule 25-4.043, Florida Administrative Code, provides that:

The necessary replies to inquiries propounded by the Commission's staff concerning service or the complaints received by the Commission shall be furnished within fifteen (15) days from the date of the Commission inquiry.

Heartline failed to respond four times to staff's inquiries concerning the billing information for the February 7, 1997, calling card test calls. After the initial requests, staff made its first follow up inquiry on May 12, 1997. Attachment 2. Next, on June 5, 1997, staff mailed a certified letter to the company with the same request. Attachment 3. Staff then contacted the company by telephone on July 17, 1997, to request the billing

DOCKET NO. 971306  
DATE: November 6, 1997

information. Finally, on July 29, 1997, staff again requested the information by means of another certified letter. Attachment 4. Since the company has failed to respond, staff believes the company is in apparent violation of Rule 25-4.043, Florida Administrative Code.

Rule 25-4.019, Florida Administrative Code, provides that:

(1) Each utility shall furnish to the Commission at such times and in such form as the Commission may require, the results of any required tests and summaries of any required records.

As already noted, Heartline failed repeatedly to produce the billing information related to staff's toll timing and billing tests. These tests were not unusual, but were part of staff's routine evaluation activity. Thus, staff believes the company is in apparent violation of Rule 25-4.019, Florida Administrative Code.

Rule 25-24.480, Florida Administrative Code, provides that:

(2) Each company shall file updated information for the following items with the Division of Communications and the Division of Records and Reporting within 10 days after such changes occur:

(a) The address of the certificate holder's main corporate and Florida offices (if any) including street name and address and post office box, city, state and zip code.

(b) Telephone number, name, and address of the individual who is to serve as primary liaison with the Commission in regards to the ongoing Florida operations of the certificated company.

DOCKET NO. 971306  
DATE: November 6, 1997

As noted in the Case Background, staff was unable to reach Heartline on October 3, 1997, because the company's telephone number was no longer in service. Ten days have passed since a change has evidently occurred and the company has not filed updated information as required. Thus, staff believes the company is in apparent violation of Rule 25-24.480(2), Florida Administrative Code.

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its 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, Florida Statutes, or revoke any certificate issued by it for any such violation. 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). Thus, intentional acts, such as Heartline's conduct at issue here, would meet the standard for a "willful violation."

Staff believes that Heartline's apparent conduct in failing to respond to staff inquiries and to file updated information within 10 days after a change occurs has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled 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, "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule."

Accordingly, staff recommends that the Commission find that Heartline's apparent violations of Rules 25-4.043, 25-4.019, and 25-24.480(2)(a) and (b), Florida Administrative Code, rise to the level warranting that a show cause order be issued. Heartline should be ordered to show cause in writing within 20 days of the Commission's order why it should not be fined in the amount of \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code; \$15,000 for apparent violation of Rule 25-4.019, Florida Administrative Code; and \$ 500 for apparent violation of Rules 25-24.480(2)(a) and (b), Florida Administrative Code, or have its certificate revoked. Pursuant to Section 364.285, Florida Statutes, any fines that may be levied should be

DOCKET NO. 971306  
DATE: November 6, 1997

forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285, Florida Statutes.

If Heartline fails to respond to the Commission's show cause order, the fines should be deemed assessed. If the fines are not paid within five business days of the expiration of the show cause response period, Heartline's certificate should be canceled.

DOCKET NO. 971306  
DATE: November 6, 1997

**ISSUE 2:** Should the Commission order all certificated interexchange companies (IXCs) to discontinue providing interexchange telecommunications service to Heartline pursuant to Rule 25-24.4701(3), Florida Administrative Code, if certificate number 3494 is canceled?

**RECOMMENDATION:** Yes. Pursuant to Rule 25-24.4701(3), Florida Administrative Code, the Commission should order all certificated interexchange companies to discontinue providing interexchange telecommunications service to Heartline if Heartline's certificate is canceled as the result of the Commission's action in Issue 1. The order should state that any IXC providing service to Heartline must contact the Commission at the conclusion of the show cause response period as set forth in the order to determine whether the certificate has been canceled. (LEWIS, PELLEGRINI)

**STAFF ANALYSIS:** Rule 25-24.4701(3), Florida Administrative Code, states in part:

(3) The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

As recommended in Issue 1, if Heartline fails to respond to the Commission's show cause order, the fines should be deemed assessed and, if not paid within five business days of the expiration of the show cause response period, Heartline's certificate should be canceled. If Heartline's certificate is canceled, any intrastate interexchange service offered by Heartline would be in violation of Rule 25-24.4701(3), Florida Administrative Code. Since the Commission cannot readily identify which IXC provides service to Heartline, the Commission should order all

DOCKET NO. 971306  
DATE: November 6, 1997

certificated IXCs to discontinue service to Heartline, if Heartline fails to comply with the terms of the Commission's order resulting from these recommendations. The order should state that any IXC providing service to Heartline must contact the Commission at the conclusion of the show cause response period as set forth in the order to determine whether the certificate has been canceled.



DOCKET NO. 971306  
DATE: November 6, 1997

ISSUE 3: Should this docket be closed?

RECOMMENDATION: This docket should remain open pending resolution of the show cause proceeding. If, however, Heartline fails to respond to the Commission's order to show cause, the company's certificate should be canceled and this docket closed administratively. (PELLEGRINI)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, Heartline will have 20 days from the issuance of the Commission's order to respond in writing why it should not be fined in the amounts proposed or have its certificate canceled. This docket, accordingly, should remain open pending resolution of the show cause proceeding.

If, however, Heartline fails to respond to the Commission's show cause order, the fines will be deemed assessed in the amounts proposed in Issue 1. If the fines remain unpaid five business days after the expiration of the show cause response period, Heartline's certificate should be canceled and this docket closed administratively.

Commissioners:  
**JULIA L. JOHNSON, CHAIRMAN**  
**SUSAN F. CLARK**  
**J. TERRY DEASON**  
**DIANE K. KIESLING**  
**JOE GARCIA**



DIVISION OF COMMUNICATIONS  
**WALTER D'HAESELEER**  
 DIRECTOR  
 (904) 413-6600

## Public Service Commission

January 13, 1997

**RECEIVED**  
 TAMPA DISTRICT

FEB 17 1997

FLORIDA PUBLIC SERVICE  
 COMMISSION

Ms. Gloria Cross  
 Heartline Communications Inc.  
 P.O. Box 53209  
 Houston, TX 77052-3029

Dear Ms. Cross:

Staff from the Bureau of Service Evaluation are scheduled to evaluate your company in the following exchanges: (Tampa exchange). The central offices and numbers that are presubscribed to your company are shown on the enclosed attachment. This evaluation will be conducted during the period of (1-20-97 thru 2-14-97) pursuant to Chapter 25-21.26, to execute a comprehensive telephone service evaluation to assure the availability and provisioning of safe, efficient and sufficient communications throughout the state. Our evaluation program applies not only to local exchange companies but to interexchange companies as well.

A significant part of this evaluation will be the generation of test calls from selected central offices in the exchanges to be evaluated to all NXX codes throughout the State of Florida. The purpose of these calls is to determine the following:

- 1) The call completion rate.
- 2) Timing accuracy to determine if the call was properly timed.
- 3) Whether the call was billed according to the tariff.
- 4) The rating accuracy to determine if the proper amount was billed for the units generated.
- 5) Whether the transmission parameters were met.

Since we test both 1+ and 0+ billing, please provide a calling card and PIN number for the 0+ calls. Regular bills for our test calls should be sent to:

The Florida Public Service Commission  
 Division of Communications  
 9950 Princess Palm Avenue  
 Suite 310  
 Tampa, Florida 33619-8370  
 ATTN: Chet Wade

Ms. Cross  
Page 2  
January 13, 1997

The Florida Public Service Commission account should be established the same as your regular customers. Since this is a part of the Commission's normal surveillance activity, no reimbursement will be made for our test calls. Therefore, proper disposition should be made of these charges and the accounts closed within sixty (60) days or two (2) complete billing cycles after our review is completed.

Please respond with the tariff section(s) and paragraphs that you will use to bill our test calls.

Should you have any questions, please feel free to contact Chet Wade (813) 744-6636 or me at (904) 413-6570.

Sincerely,



Don McDonald  
U.S./Comm. Engineer Supervisor  
Bureau of Service Evaluation

c: Alan Taylor  
Chet Wade

Attachment to Heartline letter

Fast number for central office FIC'd to Heartline

Pinscrest

813-737-2723

Commissioners:  
 JULIA L. JOHNSON, CHAIRMAN  
 SUSAN F. CLARK  
 J. TERRY DEASON  
 JOE GARCIA  
 DIANE K. KIESLING



DIVISION OF COMMUNICATIONS  
 WALTER D'HAESLEER  
 DIRECTOR  
 (904) 413-6600

## Public Service Commission

May 12, 1997

Ms. Gloria Cross  
 Heartline Communications, Inc.  
 P.O. Box 53029  
 Houston, TX 77052-3029

Re: Billing information for calling card 494 3628

Dear Ms. Cross:

Commission staff have not received billing information from the recent testing of Heartline Communications' calling card for your *Travel Service* plan. Our records indicate test calls were placed from (813) 737-2723 on February 7, 1997 using your *Travel Service*. Please provide the required billing information no later than May 30, 1997.

Rule 25-4.043, *Response to Commission Staff Inquiries* states: "The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry."

Should you have any question please contact Clayton Lewis at (904) 413-6578 or Fax at (904) 413-6579.

Sincerely,

Don McDonald  
 U.S./Comm. Engineer Supervisor  
 Bureau of Service Evaluation

cc: Clayton Lewis

Commissioners:  
 JULIA L. JOHNSON, CHAIRMAN  
 SUSAN F. CLARK  
 J. TERRY DEASON  
 JOE GARCIA  
 DIANE K. KIESLING



DIVISION OF COMMUNICATIONS  
 WALTER D'HAESELEER  
 DIRECTOR  
 (904) 413-6600

## Public Service Commission

June 5, 1997  
 CERTIFIED

Ms. Gloria Cross  
 Heartline Communications, Inc.  
 P.O. Box 53029  
 Houston, TX 77052-3029

Re: Billing information for calling card 494 3628

Dear Ms. Cross:

On May 12, 1997 staff requested billing information from our testing of Heartline Communications' calling card. We have not received the information. Please provide the required billing information no later than June 20, 1997.

Rule 24.043, Florida Administrative Code, *Response to Commission Staff Inquiries* states: "The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry."

Should you have any question please feel free to contact Clayton Lewis at (904) 413-6578 or Fax at (904) 413-6579.

Sincerely,

Don McDonald  
 U.S./Comm. Engineer Supervisor  
 Bureau of Service Evaluation

Encl  
 cc: Clayton Lewis

Commissioners:  
 JULIA L. JOHNSON, CHAIRMAN  
 SUSAN F. CLARK  
 J. TERRY DEASON  
 JOE GARCIA  
 DIANE K. KESLING



DIVISION OF COMMUNICATIONS  
 WALTER D'HAESELEER  
 DIRECTOR  
 (904) 413-6600

## Public Service Commission

July 29, 1997  
 CERTIFIED

Ms. Gloria Cross  
 Heartline Communications, Inc.  
 P.O. Box 53029  
 Houston, TX 77052-3029

Re: July 17, 1997 Phone Conversation concerning billing information for calling card 494 3628

Dear Ms. Cross:

On May 12th, and June 5th staff requested billing information from our testing of Heartline's calling card. We have not received the requested information. Please provide the information by August 15th or provide a written response as to why Heartline has failed to provide the required billing information.

Rule 25-4.043, Florida Administrative Code, *Response to Commission Staff Inquiries* states: "The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry."

Should you have any question please feel free to contact Clayton Lewis at (904) 413-6578 or Fax at (904) 413-6579.

Sincerely,

Don McDonald  
 U.S./Comm. Engineer Supervisor  
 Bureau of Service Evaluation

Encl

cc: Clayton Lewis