

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Value Tel, Inc. for apparent violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 981869-TI  
ORDER NO. PSC-99-0414-SC-TI  
ISSUED: February 26, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE

BY THE COMMISSION:

I. BACKGROUND

On December 13, 1994, by Order No. PSC-94-1547-FOF-TI, in Docket No. 941034-TI, this Commission issued certificate no. 3962 to Value Tel, Inc. (Value Tel) to provide interexchange telecommunications service in Florida. On September 23, 1997, by Order No. PSC-97-1099-FOF-TI, in Docket No. 970942-TI, we canceled Value Tel's certificate for failure to pay regulatory assessment fees, including statutory penalties and interest.

Although Value Tel's certificate has been canceled since 1997, we recently received a complaint regarding apparent unauthorized charges billed to the customer's account. On June 1, 1998, our staff faxed a copy of the complaint to Value Tel, requesting a response. Our staff's review of the information provided by Value Tel, as well as by the customer, shows that the customer's long distance service had been switched without authorization. In this regard, our staff notified Value Tel of the apparent slamming complaint and requested that Value Tel rerate the customer's bill.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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Our staff also requested a response from Value Tel by August 28, 1998. Our staff contacted the customer to verify that no additional billing or collection efforts had been made on behalf of Value Tel. On October 7, 1998, our staff then sent a certified letter to Value Tel informing it of the failure to respond regarding the apparent unauthorized charges and that it was apparently operating in Florida without a certificate. This letter was signed for and received on October 13, 1998, but to date, no response has been received.

## II. APPARENT VIOLATIONS

Rule 25-24.470, Florida Administrative Code, states, in pertinent part:

(1) No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission.

Based on the information received from the customer and the local exchange company, it appears that Value Tel is providing telecommunications service in Florida without a certificate, in apparent violation of Rule 25-24.470, Florida Administrative Code.

In addition, Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, states:

(1) The primary interexchange company (PIC) of a customer shall not be changed without the customer's authorization.

Value Tel has not provided our staff with any information obtained from the customer authorizing the change in service. Therefore, Value Tel is in apparent violation of Rule 25-4.118, Florida Administrative Code.

Furthermore, 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.

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Our staff sent a certified letter to Value Tel on October 7, 1998, with a response date of October 22, 1998. The letter was signed for and received on October 13, 1998. To date, no response has been received.

### III. CONCLUSION

Pursuant to Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364, Florida Statutes. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is 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). Accordingly, we hereby order Value Tel to show cause in writing within twenty-one (21) days of the effective date of this Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, \$10,000 for apparent violation of Rule 25-4.118, Florida Administrative Code, and \$10,000 for failure to comply with Rule 25-4.043, Florida Administrative Code. Failure to respond in a timely manner shall constitute an admission of the violations described above, waiver of the right to a hearing, and will result in the assessment of the appropriate fine.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Value Tel, Inc. shall show cause in writing within 21 days of the effective date of the order why it should not be fined \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, \$10,000 for apparent violation of Rule 25-4.118, Florida Administrative Code, and \$10,000 for failure to comply with Rule 25-4.043, Florida Administrative Code. It is further

ORDERED that any response to the Order to Show Cause filed by Value Tel, Inc. shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute

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an admission of the violations described in the body of this Order, waiver of right to a hearing, and will result in the automatic assessment of the appropriate fine. It is further

ORDERED that in the event Value Tel, Inc. fails to respond to this Order and the fines are not received within five business days from the date this Order becomes final, the fines will be transmitted to the Comptroller for subsequent collection and deposit in the State of Florida General Revenue Fund. It is further

Ordered that should Valu Tel, Inc. fail to comply with this Order, the docket shall be closed administratively. In this event, the closing of the docket in no way diminishes Value Tel, Inc.'s obligation to pay the applicable fines.

By ORDER of the Florida Public Service Commission this 26th day of February, 1999.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

JAM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 19, 1999.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

MEMORANDUM

February 2, 1999

RECEIVED-FPSC

99 FEB 26 AM 10:46

RECORDS AND  
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (MILLER) *Jam MCB*

RE: DOCKET NO. 981869-~~TI~~ - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST VALUE TEL, INC. FOR APPARENT VIOLATION OF RULE 25-24.470, F.A.C., CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED AND RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES.

99-0414-SC-T1

Attached is an ORDER TO SHOW CAUSE, to be issued in the above-referenced docket. (Number of pages in order - 5)

JAM/anr  
Attachment  
cc: Division of Communications  
I: 981869.jam

*See 1, 4*

*mail cert.*

FLORIDA PUBLIC SERVICE COMMISSION - RECORDS AND REPORTING

Requisition for Photocopying and Mailing

Date 2 / 26 / 99  
 Number of Originals 5 Copies Per Original 14  
 Requested By Mark K.

**Item Presented**  
 \_\_\_\_\_ Agenda For (Date) \_\_\_\_\_ Order No. 77-0414 In Docket No. 781869-7I  
 \_\_\_\_\_ Notice of \_\_\_\_\_ For (Date) \_\_\_\_\_ in Docket No. \_\_\_\_\_  
 \_\_\_\_\_ Other \_\_\_\_\_

**Special Handling Instructions**  
 \_\_\_\_\_

Distribution/Mailing			
Number	Distributed/Mailed To	Number	Distribution/Mailed To
<u>14</u>	<u>Commission Offices</u>	<u>--</u>	<u>_____</u>
<u>①</u>	<u>Docket Mailing List - Mailed</u>	<u>_____</u>	<u>_____</u>
<u>✓</u>	<u>Docket Mailing List - Faxed</u>	<u>_____</u>	<u>_____</u>

Note: Items must be mailed and/or returned within one working day after issue unless specified here:

**Print Shop Verification**  
 Job Number 8 Verified By Michael  
 Date and Time Completed 3/2 Job Checked For Correctness and Quality (Initial) U

**Mail Room Verification**  
 Date Mailed / Verified By /