



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

RECORDS AND REPORTING

99 MAY 20 AM 9:59

RECEIVED-FPSC

**DATE:** MAY 20, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAY)

**FROM:** DIVISION OF LEGAL SERVICES (MILLER) *CB for Tam*  
DIVISION OF COMMUNICATIONS (BIEGALSKI) *WB JD*

**RE:** DOCKET NO. 981869-TI - INITIATION OF SHOW CAUSE PROCEEDING AGAINST VALUE TEL, INC. FOR APPARENT VIOLATION OF RULE 25-24.470, FLORIDA ADMINISTRATIVE CODE, CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED, RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, LOCAL, LOCAL TOLL OR TOLL PROVIDER SELECTION, AND RULE 25-4.043, FLORIDA ADMINISTRATIVE CODE, RESPONSE TO COMMISSION STAFF INQUIRIES

**AGENDA:** 06/01/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\981869.RCM

### CASE BACKGROUND

- December 13, 1994 - Value Tel, Inc. (Value Tel) received certificate number 3962 in order to offer interexchange telecommunications service in Florida.
- September 23, 1997 - Value Tel's certificate was canceled for failure to pay regulatory assessment fees.
- May 26, 1998 - The Division of Communications received a complaint from Paul Zimmerman of The Office Suite regarding the apparent unauthorized change of the its long distance service by Value Tel.
- February 26, 1999 - Staff issued Order No. PSC-99-0414-SC-TI, in Docket No. 981869-TI, ordering Value Tel to show cause in writing within 21 days of the effective date of the Order why

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

it should not be fined \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, \$10,000 for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll or Toll Provider Selection, and \$10,000 for failure to comply with Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, or have its certificate canceled.

- March 16, 1999 - Value Tel timely responded to the order by filing a Motion for Extension of Time.
- April 2, 1999 - Value Tel submitted its offer of settlement. (Attachment A, Pages 5-11)

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant Value Tel, Inc.'s Motion for Extension of Time?

**RECOMMENDATION:** Yes. The Commission should grant Value Tel's Motion for Extension of Time. **(Miller)**

**STAFF ANALYSIS:** As stated in the case background, Value Tel was required by Order No. PSC-99-0414-SC-TI, issued February 26, 1999, to respond and show cause why it should not be fined for violation of Rule 25-24.470, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, and Rule 25-4.043, Florida Administrative Code by March 19, 1999. On March 16, 1999, Value Tel timely responded to the order by filing a Motion for Extension of Time. The ongoing settlement discussions with staff were the asserted grounds for value Tel's request for an extension of time. Because settlement negotiations were ongoing and have been successful to the extent a settlement offer supported by staff is now before the Commission, staff believes it is appropriate to recommend granting Value Tel's motion. If the settlement offer discussed in Issue 2 of this recommendation is not approved, staff recommends that an additional extension of 10 days from the date of the vote be granted in order to give Value Tel an opportunity to fully respond to the Show Cause Order.

DATE: May 20, 1999

**ISSUE 2:** Should the Commission accept the settlement offer proposed by Value Tel, Inc. to resolve the apparent violations of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, Rule 25-4.118, Florida Administrative Code, Local, Local Toll or Toll Provider Selection, and Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

**RECOMMENDATION:** Yes. The Commission should accept the company's settlement proposal. Any contribution should be paid by the company within 5 business days from the issuance date of the Commission Order. The Commission should forward the contribution to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of its settlement offer, the monetary settlement will be forwarded to the Office of the Comptroller for collection. **(Biegalski)**

**STAFF ANALYSIS:** On April 2, 1999, Value Tel submitted an offer to settle. In its settlement offer Value Tel states that prior to the cancellation by the FPSC, a disagreement arose amongst the shareholders which necessitated the cessation of the ongoing operation of Value Tel. It was decided that in order to maintain the continuity of service to Value Tel customers, two of the former shareholders would take over the billing and customer responsibilities. It was the intent of Value Tel to continue to service its customers until its operations could properly be shut down. In the meantime, Value Tel's certificate was canceled by the FPSC. Although Value Tel did not solicit any customers in Florida, Value Tel, in the best interest of its customers, did continue servicing its customers. Since that time, Value Tel has placed its customers with another carrier and is no longer conducting business in the State of Florida.

In addition, Value Tel states that it did not provision the change of The Office Suite's telephone service. It is Value Tel's contention that the problem with The Office Suite's account began when the permissive dialing ended for the 407/561 area code split. In this regard, Value Tel agrees to the following:

- Issue a full credit to Mr. Zimmerman as resolution to their complaint.
- Make a voluntary contribution to the General Revenue Fund in the amount of \$500.

The company has satisfactorily addressed each of staff's concerns. Moreover, the company has been very cooperative in resolving all issues. Therefore, staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, in the amount of \$500.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** No. With the approval of Issue 2, this docket should remain open pending the remittance of the \$500 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the settlement offer, the monetary settlement will be forwarded to the Comptroller's office for collection, and this docket closed. **(Miller)**

**STAFF ANALYSIS:** This docket should remain open pending the remittance of the \$500 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of its settlement offer, the monetary settlement will be forwarded to the Comptroller's office for collection, and this docket closed.

**NOWALSKY, BRONSTON & GOTHARD**

A Professional Limited Liability Company  
Attorneys at Law

Leon L. Nowalsky  
Benjamin W. Bronston  
Edward P. Gothard

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Suite 1442  
Metairie, Louisiana 70002  
Telephone: (504) 832-1984  
Facsimile: (504) 831-0892

ATTACHMENT A  
DOCKET NO. 981869-TI  
MAY 20, 1999

Monica R. Borne  
EllenAnn G. Sands

April 2, 1999

**Via Facsimile Transmission**

Ms. Kelly Biegalski  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**RECEIVED**  
**APR 09 1999**

Re: Docket No. 981869-TI (Value Tel)

**CMU**

Dear Ms. Biegalski:

Our firm has been engaged by Value Tel, Inc. to respond to the alleged violation of Rule 25-24.470 (providing service without certification) and Rule 25-4.118 (unauthorized change of primary interexchange carrier) both of which violations stem from the complaint of Mr. Paul Zimmerman.

It is the position of Value Tel, Inc, that it did not violate rule 25-4.118 and that the violation of Rule 25-4.470 should be viewed in the light of the mitigating circumstances surrounding this violation . In addition, the original complaint alleged by Mr. Zimmerman resulted solely from a misunderstanding by Mr. Zimmerman regarding how long distance service is changed from one carrier to another. In support of its position Value Tel states the following:

- 1) **Rule 25-24.470: Any violation of this rule should be viewed in light of the mitigating circumstances.**

On December 13, 1994, Value Tel, Inc, was certified with the Florida Public Service Commission (FPSC) to provide long distance services and did in fact provide such services until September 23, 1997, when the FPSC canceled Value Tel's certification.

On or about July of 1997, a disagreement arose amongst the shareholders of Value Tel which necessitated the cessation of the ongoing operation of Value Tel. In order to maintain the continuity of service Value Tel customers,

two of the former Value Tel shareholders agreed to take over the billing and customer responsibilities for the Value Tel customers.

It was the intent of the owners of Value Tel that all of the present customers of Value Tel would continue to be serviced under the Value Tel certification until such time as the Value Tel operations could be properly wound down.

As a result of Value Tel's failure to timely file required reports, the FPSC decertified Value Tel. This decertification became effective while Value Tel still had several customers in Florida and before arrangements could be made to transition the customers to other service providers. During this time frame Value Tel did not solicit any customers in Florida and its operations in Florida were solely limited to maintaining the service of its end users. The actions of Value Tel were solely intended to be in the best interest of the consumer and not for pecuniary gain. The alternative of disconnecting customers without offering an alternative provider would have created an administrative nightmare and resulted in a substantial amount of complaints.

Value Tel submits that, although technically a violation of the FPSC's rules, the actions that were taken were done in the best interest of the consumer and any fine levied by the FPSC should take this into account. Therefore, Value Tel proposes to pay a fine of \$250.00 to the FPSC to settle this violation.

2) **Rule 25-4.118: Value Tel did not slam Mr. Zimmerman.**

On December 18, 1995, Mr. Zimmerman executed a letter of agency authorizing Value Tel as his long distance provider (see attachment A). Mr. Zimmerman remained a customer of Value Tel until March 25, 1997, when he notified Value Tel that he had moved his service to LCI.

As a result of an area code split which had occurred on or about the time of the change of carrier, LCI failed to PIC one of Mr. Zimmerman's telephone numbers and this telephone number remained on Value Tel's service pursuant to the Letter of Agency (LOA) that Mr. Zimmerman originally executed (For a complete explanation see Value Tel's March 1, 1999, letter attached hereto).

Since LCI did not PIC the telephone number in question in a timely fashion, Value Tel cannot be accused of slamming. Mr. Zimmerman's telephone number was properly PICed to Value Tel pursuant to a legitimately signed LOA. The only reason why the telephone number remained on Value Tel past the March 25, 1997, date was due to LCI's delay.

Since the telephone number was never switched from Value Tel to LCI to begin with and since the original PIC was based on a signed letter of agency;

in accordance with the Federal Communication Commission's (FCC) definition of slamming, a slamming violation cannot be alleged to have occurred.

3) **Mr. Zimmerman's telephone bill from Value Tel:**

If it can be agreed that a slam did not occur, Mr. Zimmerman would be responsible for the charges. However, Value Tel proposes that it would be willing to re-rate Mr. Zimmerman's long distance bill in accordance with the rate that LCI was charging Mr. Zimmerman at the time and that Mr. Zimmerman should pay the remaining balance. In this way, Mr. Zimmerman would be in the exact position he could have expected to be in but for the delay caused by LCI. In the alternative, Value Tel would be willing to issue a full credit to Mr. Zimmerman.

Acknowledging the mitigating circumstances associated with this complaint, Value Tel would agree to pay a fine to the FPSC in the amount of \$250.00 for a violation of Rule 25-24.470 and will agree to re-rate (or if requested, credit) Mr. Zimmerman's bill in such a manner as to place him in the same position he could have expected to be in but for the delay caused by LCI.

Should you have any questions or care to discuss this proposal in greater detail, please do not hesitate to call.

Sincerely,



Leon L. Nowalsky  
Nowalsky, Bronston & Gothard, APLLC  
3500 North Causeway Blvd., Suite 1442  
Metairie, Louisiana 70002

Attorney for Value Tel, Inc.

Dec-18-95 10:27A The MULTICOM GROUP  
12/18/1995 09:56 60355518

603-527-1334 ATTACHMENT AP.08  
DOCKET NO. 981869-TI

403 569

MAY 20, 1999-19

Dec-13-95 10:26A The MULTICOM GROUP

5818 \$19315  
603-527-1334

P.08

X-O

Value Tel Order Form

1841 Centre Point Dr. Naperville, IL 60563  
Tel. 708-503-0005 Fax 708-503-0438

Agent # 648

Date 12/18/95

Agent Name MAC-TEL INC

Please Print

One Physical Location BTN Per Form

Form MUST be complete!

Billing Address:		Physical Location (leave blank if same)			
Billing Name: PAUL ZIMMERMAN	Address: PO Box 200	Billing Name: PAUL ZIMMERMAN	Address: 12479 HARBOR RIDGE BLVD		
City/ST./Zip: WOLFEBORO NH 03874	Contact: Lori Bowen	City/ST./Zip: PALM CITY FL 34990	Contact: Lori Bowen		
Tel #: 603-567-5818	Fax #: 603-567-5818 x225	BTN: 407-336-3549	Fax #: 603-567-5818 x225		
Misc:	Rates:	Fees:			
<input checked="" type="checkbox"/> New Addition/Deletion	CPM Inter Int'l Rate Plan	Monthly Fee \$5			
<input type="checkbox"/> Business <input checked="" type="checkbox"/> Residential	1+ 129	Non-Verified Account Codes... No Charge			
EST Monthly Usage:	800	Verified Account Codes... \$10/month			
SSN:	Card	Digits for codes (2-6):			
OR	800 PIN	800 PIN #: \$0.50/mo.			
FEIN#:		For NEW 800 #: only \$25/mo Minimum Usage Fee			

BTN 407-336-3549	WTN's	# Calling Cards	& Names:
WTN's		1.	
		2.	
		3.	
		4.	

800 Transfer and Responsible Organization Letter of Agency

I, the undersigned, authorize Value Tel or its designated vendor to act as my agent in all matters relating to providing my long distance service for the telephone number(s) listed on this form. In particular, but not limited to, to act as the Responsible Organization, to select and change carrier of the transport carrier and to obtain information relating to my account from any local exchange or long distance telephone company. Value Tel does not authorize the public disclosure of any 800 number until that number is in operation and confirmed in writing. Value Tel hereby specifically disclaims any liability relating to the customer use of any such 800 number prior to written notification. This authorization will remain in effect until withdrawn by written notice.

Area of Service (Check One or More):  USA  + Canada  + Virgin Islands/Puerto Rico

Existing 800# Ring to Number:  
800 - \_\_\_\_\_  
800 - \_\_\_\_\_

New 800# Ring to Number: (OFFICE USE): Assigned 800#

New 800 PIN# Ring to Number: (OFFICE USE): Assigned PIN Assigned 800#

Letter of Agency

My signature on this application authorizes Value Tel to act as my agent in all matters relating to providing my long distance service for the telephone number(s) listed on this form. In particular, but not limited to, to select and change POC choice of the transport carrier, and the plan and billing method, and to obtain information relating to my account from the local exchange carrier. I understand (1) I may only authorize to one long distance carrier for the listed telephone number(s) (2) Value Tel is the actual underlying carrier's name may appear on my local telephone company bill at the time service begins. (3) There may be a charge from the local transport carrier for subscribing my long distance service to transport carrier. (4) There may be a charge from my local telephone company should I decide or my agent decides to change the long distance transport after my service begins. (5) The billing, collection and customer service function may be provided by the transport carrier until such time that my agent elects to provide these functions directly or through a third party. If this application is accepted and credit is thereby established, we agree to pay by the stated due date all charges incurred and billed to me for long distance, 800, calling card usage and any other services established for reasons or they may be contracted for. I understand that rates and fees are subject to change and, if I don't pay my bill promptly, that my local telephone carrier will bill me for services. All parties agree that Plaintiff's signatures are

*Paul Zimmerman*

Paul Zimmerman Owner

DEC 18 1995



ATTACHMENT A  
DOCKET NO. 981869-TI  
MAY 20, 1999

July 9, 1998

Kelly Biegalski  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

RE: Request No. 2146731  
Lauri Bowen/Paul Zimmerman

VALUE  
TEN

Dear Ms. Biegalski:

The number which we were billing Mr. Zimmerman for is 561-336-3549. We originally had his phone number 407-336-3549. Due to an area code split to the 561, Mr. Zimmerman's new carrier did not pic this line when the rest of his service was cancelled by Lauri on March 25, 1997. As the letter from the billing department states, there was a conference call with Lauri, Mr. Zimmerman and one of our customer service representatives on 3/25/97 at which time we were told that all service had been moved to LCI and we cancelled the service.

On December 4, 1997, Lauri called again to customer service and said she received a bill for the 561-336-3549. She was informed again to have LCI pic the line, since they had never moved the line off our network. We continued to receive call records for this line through 1/13/98 which now totals \$484.37 with finance charges. When Lauri called in to customer service on 1/5/98, she was put through to our Billing Manager, who personally cancelled the line through a phone call to our carrier on 1/12/98. Our Billing Manager informed Lauri that in order for Mr. Zimmerman to have any long distance that LCI had to pic the line at the local carrier exchange. She said this was not her responsibility, that we should somehow transfer the line to LCI. Our Billing Manager explained that once she cancelled the service on 1/12 that Mr. Zimmerman would not be able to make a long distance call unless she called LCI to pic the line. Lauri again stated that it was not her responsibility to pay for the long distance calls made on this line -- that LCI should have billed her, not our company.

On 1/14/98 Paul Zimmerman called in and was extremely upset that he had no long distance service. It was explained to him that Lauri had called in to our customer service and that she refused to pay for any long distance charges and that LCI should be billing the calls.

ATTACHMENT A  
DOCKET NO. 981869-TI  
MAY 20, 1999

On 1/14/98 LCI finally picked up the line 561-336-3549 (Mr. Zimmerman's number). We originally had credited out the \$43.49 back in January with the understanding that Lauri would call LCI and have the line picked over so that we would not receive any more calls. Ms. Bowen and Mr. Zimmerman did not call LCI to have the line switched and we continued to receive call data. The bill is now \$484.37 with finance charges. Our billing manager's letter on April 20, 1998 explained that the usage would have to be paid and offered as per the FCC (even though the line was not slammed) to rerate the bill to LCI's rates. Our Billing Manager requested the rates that LCI charged for the other lines with either a copy of a bill or a signed LOA.

Presently, Ms. Bowen/Mr. Zimmerman have had no further correspondence since the April 20th letter and refuse to pay for any service rendered on the line that LCI did not pick up in a timely fashion. We will waive all finance charges, fees, etc. and even rerate to the LCI cost as stated in my Billing Manager's letter, if Ms. Bowen/Mr. Zimmerman will provide the cost. Once they provide this information, my billing manager will rerate our bills and provide a final invoice which needs to be paid and the account will be zeroed out.

If you have any questions, please contact my Billing Manager.

Sincerely,

Brian Sledz  
President

**NOWALSKY, BRONSTON & GOTHARD**

A Professional Limited Liability Company  
Attorneys at Law

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Metairie, Louisiana 70002  
Telephone: (504) 832-1984  
Facsimile: (504) 831-0892

Monica R. Borne  
EllenAnn G. Sands

May 5, 1999

**Via Facsimile Transmission  
and U.S. First Class Mail  
(850) 413-6547**

Ms. Kelly Biegalski  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: ValueTel: Docket No. 981869-TI

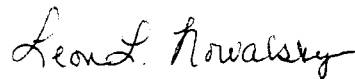
Dear Ms. Biegalski:

In confirmation of our telephone conversation of this date, ValueTel, Inc. is agreeable to paying a fine of \$500.00 to the Florida Public Service Commission (FPSC) in settlement of those issues raised in the above referenced docket.

In addition, ValueTel will credit the outstanding balance owed by Mr. Zimmerman and cease all collection efforts with respect to Mr. Zimmerman's account.

Should you have any questions do not hesitate to call.

Sincerely,

  
Leon L. Nowalsky

LLN/sw  
Enclosure  
cc: Tim Sledz

RECEIVED

MAY 10 1999

CMU