



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

**DATE:** JANUARY 20, 2000

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

**FROM:** DIVISION OF LEGAL SERVICES (FORDHAM) *< P.F. BIC*  
 DIVISION OF COMMUNICATIONS (TRUBELHORN) *MT RM*  
 DIVISION OF AUDITING AND FINANCIAL ANALYSIS (SAMAAN) *SD*

**RE:** DOCKET NO. 991861-TI - REFUND OF OVERCHARGES BY COASTAL TELEPHONE COMPANY FOR OVERTIMING INTRASTATE LONG DISTANCE SERVICES, AND INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST CINCINNATI BELL INC. (FORMERLY ECLIPSE TELECOMMUNICATIONS, INC., FORMERLY COASTAL TELEPHONE COMPANY) FOR COASTAL'S VIOLATION OF RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES.

**AGENDA:** 2/1/2000 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUE 1 - SETTLEMENT PROPOSAL FOR ISSUE 2 - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\991861.RCM

### CASE BACKGROUND

- July 27, 1998 - Staff advised Coastal Telephone Company that it would conduct an Interexchange Carrier Service Evaluation from August 10 through October 2, 1998.
- March 9, 1999 - Staff reported that all 54 Calling Card test calls were overtimed and overrated. Staff asked the company to report corrective actions taken by April 9, 1999.
- April 26, 1999 (response late) - Received the company's reply, dated April 22, 1999, that it would work on resolving an apparent network synchronization problem with its vendor.

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- May 19, 1999 - Staff sent a Certified letter asking the company to report the duration of overtime problems, the number of subscribers affected, and the revenue effect. Staff requested a response by June 14, 1999.
- May 21, 1999 - PAA Order No. PSC-99-0833-FOF-TI, dated April 23, 1999, and Consummating Order No. PSC-99-1021-CO-TI approved the transfer of control and ensuing merger of Coastal Telephone Company to Eclipse Telecommunications, Inc., holder of Interexchange Company Certificate No. 3178; the orders canceled Coastal's Certificate No. 4737 effective February 2, 1999.
- June 14, 1999 - Company requested a 30-day extension to respond to staff's May 19, 1999 letter; staff granted an extension to July 14, 1999.
- July 30, 1999 (response late) - Coastal responded that the overtime problems occurred from early 1998 to early 1999, that they affected 2,796 subscribers, that it overbilled a total of \$24,461.79, that it has not offered a refund because it cannot determine which customers are still using the company's service.
- August 5, 1999 - Staff requested additional information and confirmation that the network synchronization problem had been corrected.
- August 20, 1999 - Coastal wrote that the overtime problem began in March 1998 when its Atlanta switch became operational; the network synchronization problem was corrected in March 1999; the \$24,461.79 estimate for overtime included both intrastate and interstate overcharges (the intrastate estimate equals \$4,892.36); and it proposed to refund the \$4,892.36 directly to the Commission because it lacks the automated systems necessary to determine a specific refund amount per end-user account.
- October 15, 1999 - PAA Order No. PSC-99-1873-PAA-TI, dated September 2, 1999, Consummating Order No. PSC-99-2021-CO-TI approved the transfer of control of Eclipse Telecommunications, Inc. to Cincinnati Bell Inc.
- December 9, 1999 - Staff requested additional information to calculate the interest charges for the company's refund offer. Staff also notified Eclipse that it planned to recommend a show cause action for Coastal's two apparent violations of Rule 25-4.043, Response to Commission Staff Inquiries.

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- December 27, 1999 - The company asserted that it has complied with Rule 25-4.043 and that it had received an extension to July 30, 1999 for the Commission's May 19, 1999 letter. (Staff had granted an extension to July 14, 1999, but not to July 30, 1999.) The company also noted that it had cooperated with several staff members over the course of the investigation.
- December 30, 1999 - PAA Order No. PSC-99-2311-PAA-TI, dated December 2, 1999, and Consummating Order No. PSC-99-2550-CO-TI canceled Eclipse Telecommunications, Inc.'s Certificate No. 3178 effective October 13, 1999.
- January 3, 2000 - Staff called the company, acknowledged the mitigating circumstances (dealing with several staff employees and two company acquisitions during our investigation) and agreed to consider a settlement offer if the company chose to make one.
- January 4, 2000 - The company, now Cincinnati Bell Inc., offered \$2,500 in settlement of the alleged violation of Rule 25-4.043. (Attachment A, page 8)
- January 7, 2000 - AFA calculated the interest payable (\$410.45) for the refund offer for the overtiming overcharges found during the 1998 Service Evaluation.

#### DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept Coastal Telephone Company's offer to refund and refund calculation of \$4,892.36, plus interest of \$410.45, for a total of \$5,302.81, for overcharging subscribers by overtiming calling card intrastate long distance calls from March 1998 through March 1999?

RECOMMENDATION: Yes. The Commission should accept Coastal's offer to refund and refund calculation of \$4,892.36, adding interest of \$410.35, for a total of \$5,302.81, for overcharging subscribers by overtiming calling card intrastate long distance calls from March 1998 through March 1999. The refund payment should be remitted to the Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), F.S., within 5 business days after the issuance of the consummating order. (Trubelhorn)

**STAFF ANALYSIS:** Staff conducted an Interexchange Carrier Service Evaluation of Coastal Telephone Company's service from August 10 through October 2, 1998. Staff found that the company had overtimed and overrated (billed its subscribers more than its tariffed rates) all 54 Calling Card test calls; staff forwarded the results to Coastal by letter dated March 9, 1999.

Overtiming Problems:

As described in the Case Background over several letters, staff learned that (1) the network synchronization problem that caused the overtiming problems was corrected, (2) the overtiming problems affected 2,796 Florida subscribers, (3) the company's estimate of the intrastate revenue effect of the overtiming problems from March 1998 to March 1999 was \$4,892.36, (4) the company offered to refund the overtiming overcharges to the State of Florida General Revenue Fund because it could only estimate the overtiming amount and because it lacks the automated systems necessary to determine a specific refund amount per end-user account. Staff reviewed (and accepts) Coastal's computation of the overcharges - the company first calculated its total, intrastate and interstate, calling card revenues during the overtiming period; then it calculated an overtiming average of 0.4 minutes per call that it used to determine an overall overtiming estimate for its calling card service; and, finally, it applied its Feature Group D estimate of intrastate to interstate calls to estimate the intrastate overtiming overcharges. Staff accepts the company's explanation for its inability to refund directly to the 2,796 affected subscribers; staff furthermore recognizes that the company's ability to refund directly to Coastal's subscribers has been adversely affected because it was acquired twice since the 1998 testing.

The company plans to make the refund payment for the overtiming problems on March 15, 2000 upon expiration of the protest period, assuming Commission approval of this Issue on February 1, 2000.

Overrating Problem:

Staff accepts the company's explanation that the overrating problem was specific to the Commission's account, was caused by a clerical error (a company clerk established our test account in a non-traditional manner causing it to default to a Texas travel card plan), and therefore did not affect Florida subscribers. Staff, therefore, recommends no Commission action with respect to the overrating problem.

Based on the above analysis, staff recommends that the Commission should accept Coastal's offer to refund and refund calculation of \$4,892.36, adding interest of \$410.35, for a total of \$5,302.81, for overcharging subscribers by overtiming calling card intrastate long distance calls from March 1998 through March 1999. The refund payment should be remitted to the Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), F.S., within 5 business days after the issuance of the consummating order.

**ISSUE 2:** Should the Commission accept the company's settlement offer to resolve Coastal's apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries?

**RECOMMENDATION:** Yes. The Commission should accept the company's settlement offer of \$2,500 for apparent violation of Rule 25-4.043, Response to Commission Staff Inquiries. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. (Trubelhorn)

**STAFF ANALYSIS:** Rule 25-4.043, Florida Administrative Code, Response to Commission Inquiries, provides that:

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.

Coastal Telephone Company responded 17 days late to staff's request, dated March 9, 1999, for corrective actions taken to correct overtiming and overrating problems with its Calling Card service. Coastal also failed to respond within 15 days to staff's Certified request, dated May 19, 1999. After granting a 30-day extension to July 14, 1999, staff received the company's response by fax on July 30, 1999 - 16 days late.

By PAA Order No. PSC-99-0833-FOF-TI, dated April 23, 1999, and by Consummating Order PSC-99-1021-CO-TI, issued May 21, 1999, Eclipse Telecommunications, Inc. acquired ownership and control of

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Coastal Telephone Company. Then by PAA Order No. PSC-99-1873-PAA-TI, dated September 2, 1999, and by Consummating Order No. PSC-99-2021-CO-TI, issued October 15, 1999, Cincinnati Bell Inc. acquired control of Eclipse Telecommunications, Inc. Both Coastal's and Eclipse's certificates have been canceled.

On December 9, 1999, staff notified the company's lawyer, Mr. Leon Nowalsky, that it planned to recommend a show cause action for Coastal's apparent violation of Rule 25-4.043, Response to Commission Staff Inquiries. Mr. Nowalsky, representing Coastal, Eclipse, and now Cincinnati Bell, Inc., argued that the company had complied with the rule, that - for the second apparent violation - it had been granted an extension to July 30, 1999, and that any perceived delay should be overlooked since it had to interact with several staff members during the investigation. Staff, however, has no record or knowledge of granting an extension beyond July 14, 1999. Recognizing that the company has been acquired twice since the service evaluation, staff agreed, on January 3, 2000, to consider a settlement offer. On January 4, 2000, the company (now Cincinnati Bell Inc.) offered a sum of \$2,500 to settle the apparent rule violation.

For the above reasons and since the company has cooperated in resolving all issues, staff recommends that the Commission accept the company's settlement offer. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. Staff believes the terms of the settlement offer as summarized in this recommendation are fair and reasonable.

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

**RECOMMENDATION:** No. This docket should remain open pending the remittance of the refund payment and the resolution of any protest of Issue 1 filed within 21 days of the issuance of the Order by a person whose substantial interests are affected by the Commission's Proposed Agency Action. If Issue 1 is not protested, it will become final and effective upon the issuance of a consummating order.

This docket should also remain open pending the remittance of the \$2,500 voluntary contribution. Upon remittance of the

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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 may be closed administratively upon issuance of the order consummating Issue 1. (Fordham)

**STAFF ANALYSIS:** If the Commission approves the staff recommendation in Issue 1, this docket should remain open pending remittance of the refund payment and the resolution of any protest of Issue 1 filed within 21 days of the issuance of the Order by a person whose substantial interests are affected by the Commission's Proposed Agency Action. If Issue 1 is not protested, it will become final and effective upon the issuance of a consummating order.

If the Commission approves the staff recommendation in Issue 2, this issue should also remain open pending the remittance of the \$2,500 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 may be closed administratively upon issuance of the order consummating Issue 1.

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ATTACHMENT A

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A Professional Limited Liability Company  
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Monica R. Borne  
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January 4, 2000

VIA FAX & US MAIL

Mr. Phil Trubelhorn  
Florida Public Service Commission  
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Tallahassee, FL 32399-0850

**RECEIVED**

JAN 10 2000

**CMU**

Re: Investigation of 1998 Service Evaluation  
Failures and Show Cause against Eclipse  
Docket No. 991861-TI

Dear Mr. Trubelhorn:

As a follow-up to yesterday's telephone conversation, I have been instructed by my client to accept the one-time payment option for the refund of \$4,892.36 plus interest and I would appreciate if you could provide me with the total (plus interest) for the payment.

In addition, my client has instructed me to offer the sum of \$2,500.00 in settlement of the alleged violation of Rule 25-4.043.

Please let me know if my client's settlement offer is acceptable.

Sincerely,



Leon L. Nowalsky *rh*

LLN/rph

cc: Karen Hansen