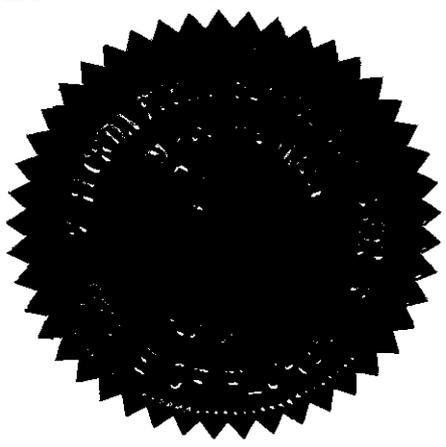


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-----  
In the Matter of  
Initiation of show cause  
proceedings against Western  
Telecom for apparent violation  
of Rule 25-24.470, F.A.C.,  
Certificate of Public  
Convenience and Necessity  
Required, Rule 25-4.043, F.A.C.,  
Response to Commission Staff  
Inquiries, and Section 364.604,  
F.S., Billing Practices.  
-----

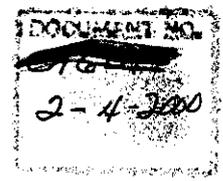
DOCKET NO. 991936-TI



\*\*\*\*\*  
\*  
\* ELECTRONIC VERSIONS OF THIS TRANSCRIPT \*  
\* ARE A CONVENIENCE COPY ONLY AND ARE NOT \*  
\* THE OFFICIAL TRANSCRIPT OF THE HEARING \*  
\* AND DO NOT INCLUDE PREFILED TESTIMONY. \*  
\*  
\*\*\*\*\*

PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 9  
  
BEFORE: CHAIRMAN JOE GARCIA  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER SUSAN F. CLARK  
COMMISSIONER E. LEON JACOBS, JR.  
  
DATE: Tuesday, January 18, 2000  
  
TIME: Commenced at 9:30 a.m.  
  
PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida  
  
REPORTED BY: JANE FAUROT, RPR  
FPSC Division of Records & Reporting  
Chief, Bureau of Reporting

FLORIDA PUBLIC SERVICE COMMISSION



## P R O C E E D I N G S

1  
2 CHAIRMAN GARCIA: Commissioners, we go back now  
3 to Item 9.

4 COMMISSIONER JACOBS: Did we figure out who had  
5 a question on 9?

6 COMMISSIONER CLARK: I think it was me.

7 COMMISSION STAFF: Commissioners, I would like  
8 to introduce a new employee within Communications, Melinda  
9 Watts.

10 CHAIRMAN GARCIA: Welcome. We have lots of  
11 questions for you. I hope you're ready. Do you remember  
12 what your question was?

13 COMMISSIONER CLARK: Yes.

14 CHAIRMAN GARCIA: I know what mine is, do you  
15 want me to ask it?

16 COMMISSIONER CLARK: Go ahead.

17 CHAIRMAN GARCIA: Is this company participating  
18 with this to some degree; are they working with us?

19 COMMISSION STAFF: No.

20 CHAIRMAN GARCIA: No. So why are we being so --  
21 if they are not being forthcoming, it strikes me that we  
22 should show cause them for the max. We can always  
23 negotiate down to a reasonable level of 2,000, but it just  
24 strikes me that if they are not paying attention we might  
25 as well slam them with -- show them how bad things can be

1 as opposed to putting it -- if they are not, if they are  
2 not cooperating with us, giving them what appears to be a  
3 reasonable fine.

4 The place you put us would be reasonable if this  
5 had been negotiated out to some degree, because it puts it  
6 about the range where these things end up. But it strikes  
7 me that if this company is not, and there is \$10,000 of  
8 fine, I would -- I would get them.

9 COMMISSIONER CLARK: I was concerned by the fact  
10 that they -- am I incorrect that they took the position  
11 that these were -- they did not have to be certificated  
12 here because they are not actually, they are just a  
13 reseller? Is this the one?

14 COMMISSION STAFF: That is what they said, yes.

15 COMMISSIONER CLARK: And they don't seem --  
16 well, let me ask this other question. At Page 8, what we  
17 referred to as unauthorized charges is the total amount  
18 that they charge for in-state services, right?

19 COMMISSION STAFF: Yes, for the nonrecurring  
20 activation fee as well as in-state usage.

21 COMMISSIONER CLARK: Any charge that is within  
22 our jurisdiction we found to be unauthorized because they  
23 were not certificated.

24 COMMISSION STAFF: Certificated, yes.

25 COMMISSION STAFF: Commissioner Clark, I wanted

1 to add that there is another affiliated company, and that  
2 affiliated company did at one point have a certificate.  
3 That is now expired. So they do realize that they need  
4 to be certificated. So their justification that -- their  
5 argument that they don't believe that they need to have a  
6 certificate because they are a reseller, that flies in the  
7 face of that argument.

8 COMMISSIONER CLARK: Yes. And I think there --  
9 we are recommending they be fined at the maximum amount,  
10 isn't it? I thought it was \$25,000 for the failure to  
11 comply with the rule, and then --

12 COMMISSION STAFF: I think Commissioner Garcia  
13 was talking about the cramming incidents. Is that true?

14 COMMISSION STAFF: Commissioner Clark, we are  
15 recommending different fines for different violations.  
16 And on Page 3 of staff's recommendation there is a  
17 summary.

18 COMMISSIONER CLARK: Okay.

19 CHAIRMAN GARCIA: Page what?

20 COMMISSION STAFF: Page 3.

21 COMMISSIONER CLARK: An our fining authority is  
22 \$25,000 for each violation and for every day it continues,  
23 right?

24 COMMISSION STAFF: Yes.

25 COMMISSION STAFF: However, we do have a

1 guideline that staff goes by, correct?

2 COMMISSION STAFF: That's correct. We don't  
3 have cramming on it at this time, though.

4 COMMISSIONER CLARK: We try to be consistent,  
5 right?

6 CHAIRMAN GARCIA: Yes, we try to be consistent.  
7 Can I make a motion? I will hand that over, as long as it  
8 doesn't --

9 COMMISSION STAFF: Commissioners, Walter wanted  
10 me to explain one thing to you. The reason that you are  
11 seeing a lesser fine, in other words, for the \$2,000 in  
12 Issue 6, instead of the \$10,000 like we normally would  
13 come to you, such as we did in the slamming, is to reduce  
14 the amount of negotiations that we are going to be doing  
15 with the companies in the future. Instead of going out  
16 there and proposing, say, a \$1 million fine and  
17 negotiating it down to \$40,000, it doesn't look like we  
18 have done an adequate job in negotiations.

19 What we are trying to do is propose fines that  
20 we think are more reasonable with the egregious act that  
21 has happened, and then we are adjusting the fines  
22 accordingly. And this \$2,000 is consistent with the  
23 matrix that was brought to you in Internal Affairs about a  
24 year and a half ago.

25 So we are going back to using that.

1           COMMISSIONER CLARK: Well, I guess the concern I  
2 have with this particular company is their, I guess,  
3 perhaps disingenuous argument that they are not a reseller  
4 when they certainly should know better, particularly if a  
5 sister company was certificated. Which is, I guess, I  
6 would say that that is evidence of a reason to treat them  
7 differently and at least initially to fine them a maximum  
8 amount.

9           CHAIRMAN GARCIA: I would --

10           COMMISSIONER CLARK: It would not be arbitrary  
11 and capricious because there are different circumstances  
12 that are aggravating circumstances.

13           COMMISSION STAFF: Understood. We have just  
14 tried to make it as consistent as we could on those  
15 things.

16           COMMISSIONER DEASON: Do I have a motion?

17           CHAIRMAN GARCIA: Yes, I would like to make a  
18 motion that we give them \$5,000 per violation. That  
19 brings the fine to I believe -- what does that bring the  
20 fine to? It is 39, so it would be 195,000. Is that what  
21 it adds up to, or is it more? Is that what it is,  
22 195,000?

23           Yes, Walter.

24           MR. D'HAESELEER: Is that what you want us to  
25 settle with this company for, that amount of money?

1           CHAIRMAN GARCIA: No. This is a company that  
2 from what I understand is not even in a negotiations  
3 posture. So it just strikes me that we need to get their  
4 attention. We are trying to be sensible and correct, and  
5 I think you are ending up where the matrix would put us  
6 with a company that is not even talking to you. Let's see  
7 if they talk now. I'm not asking you not to be sensible  
8 and correct. And, you know, maybe it looks like you  
9 caved if you come back to us with 2,000. But, hell, here  
10 is a company that is ignoring us and making a supercilious  
11 argument and here we are trying to be more than  
12 reasonable. More reasonable than we have to be.

13           COMMISSIONER JACOBS: I can put it this way,  
14 they had an opportunity to be here today with a  
15 recommendation for \$2,000 and they didn't show. I would  
16 expect that it would be nothing less than 2,000, perhaps  
17 even substantially more.

18           CHAIRMAN GARCIA: That is my motion.

19           COMMISSIONER DEASON: We have a motion. Is  
20 there a second?

21           COMMISSIONER JACOBS: Second.

22           COMMISSIONER DEASON: Moved and seconded. All  
23 in favor say aye.

24           (Unanimous affirmative vote.)

25           COMMISSIONER DEASON: The motion carries.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF FLORIDA)

CERTIFICATE OF REPORTER  
COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting FPSC Commission Reporter,

DO HEREBY CERTIFY that Agenda Item No. 9, Docket No. 991936-TI, was heard by the Florida Public Service Commission at the time and place herein stated; it is further

CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed by me; and that this transcript, consisting of 7 pages, constitutes a true transcription of my notes of said proceedings.

DATED this 5<sup>th</sup> day of February, 2000.



JANE FAUROT, RPR  
FPSC Division of Records & Reporting  
Chief Bureau of Reporting