

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of Show Cause Proceedings Against Carib Comm, Limited Partnership for Apparent Violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries and Fine Assessment for Violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 000034-TI
ORDER NO. PSC-00-0373-SC-TI
ISSUED: February 22, 2000

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE, REQUIRING RESPONSE, AND NOTICE OF PROPOSED AGENCY ACTION ASSESSING FINE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the proposed agency action discussed herein, assessing a fine upon Carib Comm, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code.

A. BACKGROUND

Carib Comm, Limited Partnership (Carib or company) currently holds Florida Public Service Commission Interexchange Telecommunications Certificate No. 3569, issued by this Commission on July 21, 1994. On January 23, 1999, Carib filed a 1998 regulatory assessment fee return, and reported revenues of \$30,506.98.

On August 2, 1999, our Division of Telecommunications (CMU) staff mailed a certified letter to Carib, attached hereto as Exhibit A and incorporated herein by reference, requesting

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FPSC-RECORDS/REPORTING

information pertaining to Carib's operator service provider rates listed in its tariff. Our staff requested a written response by August 17, 1999. The letter was signed for and received by Carib on August 5, 1999. Carib, however, failed to respond to the letter.

On January 10, 2000, our Division of Administration notified our CMU staff that Carib had a delinquent balance relating to its 1997 regulatory assessment fees, including statutory penalties and interest. Additionally, Carib had failed to remit statutory penalties and interest for the years 1994 and 1995 for the late filing of its regulatory assessment fees.

B. SHOW CAUSE

By failing to respond to our staff's August 2, 1999, letter, it appears that Carib is in apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. Rule 25-4.043, Florida Administrative Code, 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.

By Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, 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. 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).

In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., 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, we nevertheless found it appropriate to order the company to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and

this is distinct from intent to violate a rule." Thus, any intentional act, such as Carib's conduct at issue here, would meet the standard for a "willful violation." We find that Carib's conduct in failing to respond to our staff's inquiries in apparent violation of Commission Rule 25-4.043, Florida Administrative Code, has been "willful" in the sense intended by Section 364.285, Florida Statutes.

Accordingly, we find it appropriate to order Carib to show cause in writing within 21 days of the date of this 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, or have its certificate canceled. The company's response shall contain specific allegations of fact or law. If Carib fails to respond to the show cause order, the fine shall be deemed assessed. If the fine is not paid within ten business days after the order becomes final, Certificate No. 3569 shall be canceled. If the fine is paid, we will then 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.

Additionally, within ten business days of the issuance date of this Order, Carib shall provide a written response addressing the questions in our August 2, 1999 letter. If Carib fails to provide the requested information as ordered, further show cause proceedings shall be initiated.

C. PROPOSED AGENCY ACTION

As stated previously, Carib has failed to pay certain regulatory assessment fees and associated penalties and interests for 1994, 1995, and 1997 in apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalty and interest charges for any delinquent amounts, pursuant to Section 350.113, Florida Statutes

Based upon the foregoing, and pursuant to Section 364.285, Florida Statutes, we hereby assess a \$500 fine upon Carib for failure to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. The fine shall be remitted to this Commission within ten business days of

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the issuance of this Order for deposit in the State General Revenue Fund, pursuant to Section 364.285 (1), Florida Statutes. If this Order is not protested and the fine and statutory penalty and interest charges are not received as set forth in this Order, Certificate No. 3569 shall be canceled administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Carib Comm, Limited Partnership shall show cause in writing within 21 days of the issuance date of this 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. It is further

ORDERED that any response to the Order to Show Cause filed by Carib Comm, Limited Partnership shall contain specific allegations of fact and law and shall identify the company name and this docket number. It is further

ORDERED that failure to respond to the show cause action in this Order in the manner and date set forth in the "Notice of Further Proceedings and Judicial Review" section of this Order shall constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and will result in the automatic assessment of the respective fine or fines. It is further

ORDERED that in the event Carib Comm, Limited Partnership fails to respond to the show cause action in this Order and the fine is not paid within ten business days after the Order becomes final, Certificate No. 3569 shall be canceled. It is further

ORDERED that Carib Comm, Limited Partnership shall, within ten business days of the issuance date of this Order, provide a written response addressing our staff's August 2, 1999, letter, which is attached and incorporated herein as Attachment A. If Carib fails to provide the requested information as ordered, further show cause proceedings shall be initiated. It is further

ORDERED that a \$500 fine is assessed against Carib Comm, Limited Partnership for failure to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. Carib Comm, Limited Partnership shall remit the fine amount to this Commission within ten business

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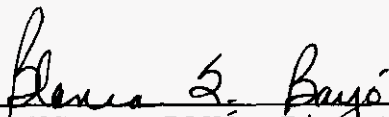
days of the issuance of this Order for deposit in the State General Revenue Fund, pursuant to Section 364.285 (1), Florida Statutes. If the assessment of this fine is not protested and the fine and statutory penalty and interest charges are not received as set forth in this Order, Certificate No. 3569 shall be canceled administratively.

ORDERED that the provisions of this Order, assessing a fine against Carib Comm, Limited Partnership, are issued as proposed agency action, and shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this Docket shall remain open to address any response to the show cause portions of this Order and any timely protest that may be filed in response to the proposed agency action portions of this Order. It is further

ORDERED that if no response to the show cause portions of this Order is filed, and the proposed agency action portions of this Order become final and effective, this Docket shall be closed administratively, upon payment of the fines.

By ORDER of the Florida Public Service Commission this 22nd day of February, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DMC

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.

The action proposed herein, assessing a fine against Carib Comm, Limited Partnership, is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 14, 2000.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any person whose substantial interests are affected by the show cause portions of this 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 14, 2000.

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.

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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.

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ATTACHMENT A

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STATE OF FLORIDA

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



DIVISION OF TELECOMMUNICATIONS
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

August 2, 1999

Mr. James Mahan
Carib Comm, Limited Partnership
12972 S.W. 133rd Court
Miami, FL 33186

CERTIFIED

Dear Mr. Mahan:

Staff is in the process of investigating the tariffed rates of the certificated operator service providers in the State of Florida. As a result, it appears that the operator service provider rates on file with the Florida Public Service Commission are in excess of the rate caps as provided in Rule 25-24.630, Florida Administrative Code. For your convenience, I have attached a copy of the Rules Governing Operator Service Providers.

Because its tariffed rates appear to exceed the rate caps applicable to an operator service provider for intrastate 0+ or 0- calls made from a pay telephone or in a call aggregator context, Carib may have overcharged consumers from the time the rate caps became effective on February 1, 1999. Please investigate and provide a written response to the following questions by August 17, 1999:

1. Please identify all circumstances in which an overcharge may have occurred (i.e. payphones, hotels/motels, etc.).
2. Please identify if the apparent overcharges were 0+ and/or 0- calls.
3. How many, if any, consumers were charged more than the rate caps applicable February 1, 1999?
4. What is the total overcharge, if any, since February 1, 1999?
5. In consideration of Rule 25-4.114, Refunds, Florida Administrative Code, what is Carib's proposal to refund consumers should overcharges be determined?
6. When will Carib revise its tariff to comply with Rule 25-24.630, Rates and Billing Requirements, Florida Administrative Code?

Should you have any questions, please feel free to contact me at (850) 413-6546.

Sincerely,

Handwritten signature of Kelly Biegalski in black ink.

Kelly Biegalski
Regulatory Analyst
Bureau of Service Evaluation

Enclosure

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Fold along line over top of envelope to

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

Consult postmaster for fee.

<p>3. Return Address</p> <p style="text-align: center;">Mr. James Mahan Carib Comm, Limited Partnership 12972 S.W. 133rd Court Miami, FL 33186</p>	<p>4a. Article Number</p> <hr/> <p>4b. Service Type</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Certified</p> <p><input type="checkbox"/> Express Mail <input type="checkbox"/> Insured</p> <p><input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD</p> <hr/> <p>7. Date of Delivery 8-5-95</p> <hr/> <p>8. Addressee's Address (Only if requested and fee is paid)</p>
<p>5. Received By: (Print Name)</p>	
<p>6. Signature (Addressee or Agent)</p> <p>X <i>Patricia Nozo</i></p>	

Thank you for using Return Receipt Service.

PS Form 3811, December 1994

Domestic Return Receipt