



Public Service Commission

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RECORDS AND REPORTING

DATE: June 8, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) *Z.S.F. BK*
DIVISION OF REGULATORY OVERSIGHT (WILLIAMS) *WJ DMH*

RE: DOCKET NO. 981488-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST ACCUTEL COMMUNICATIONS, INC. FOR UNLAWFUL BILLING PRACTICES IN VIOLATION OF SECTION 364.10(1) AND SECTION 364.604(2), F.S., AND INSUFFICIENT MANAGEMENT CAPABILITY PURSUANT TO SECTION 364.337(3), F.S.

AGENDA: JUNE 20, 2000 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\981488r3.RCM

CASE BACKGROUND

Accutel Communications, Inc. (Accutel) was granted certificate number 4854 on May 13, 1997, to provide intrastate interexchange telecommunications service. As a certificated telecommunications company, Accutel is subject to the regulations of this Commission.

From September 30, 1997, through May 6, 1999, our Division of Consumer Affairs has received 171 consumer complaints against Accutel. These complaints were closed as unauthorized charges (cramming) in apparent violation of Sections 364.10 (1) and 364.604 (2), Florida Statutes. Accutel has offered no explanation as to the genesis and nature of the \$4.95 charge that appears on the customers' telephone bills as a service rendered by Accutel. Accutel, however, has provided refunds or credits in the amount of

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\$2,440.81 for 155 of the 171 apparent cramming violations. Based on the apparent violations, by Order No. PSC-99-1619-SC-TI, issued August 18, 1999, the Commission ordered Accutel to show cause why it should not be fined or have its certificate canceled for its apparent violations of Sections 364.10 (1) and 364.604(2), Florida Statutes, Unlawful Billing Practices, and for Insufficient Management Capability, pursuant to Section 364.337(3), Florida Statutes. On September 8, 1999, Accutel responded to the Show Cause Order and this matter was set for an administrative hearing.

By Order No. PSC-99-2496-PCO-TI, issued September 20, 1999, the procedure for this docket was outlined, and the hearing and prehearing dates were established. Accutel failed to comply with this Order and did not appear at the March 23, 2000 prehearing conference. Based on Accutel's non-appearance at the scheduled Prehearing, on April 20, 2000, Order No. PSC-00-0776-FOF-TI issued, Dismissing Accutel's Response to Order to Show Cause and Imposing Fine for Violating Statutes.

On May 5, 2000, Accutel filed a Motion for Reconsideration, alleging that its failure to participate was a result of counsel of record not being noticed on each of the scheduled events in this docket. In view of Accutel's Motion for Reconsideration, and the allegations contained therein, staff brings the following recommendation.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Accutel's Motion for Reconsideration and reinstate Accutel's Response to Order to Show Cause?

RECOMMENDATION: Yes. The Commission should grant Accutel's Motion for Reconsideration and reinstate Accutel's Response to Order to Show Cause. **(Fordham)**

STAFF ANALYSIS: In Order No. PSC-99-1619-SC-TI, issued August 18, 1999, the Commission ordered Accutel, to show cause why it should not be fined in the amount of \$10,000 per infraction for a total of \$1,710,000 or have its certificate canceled for its apparent violations of Sections 364.10 (1) and 364.604(2), Florida Statutes, Unlawful Billing Practices, and for Insufficient Management Capability, pursuant to Section 364.337(3), Florida Statutes. On September 8, 1999, Accutel responded to the Show Cause Order.

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Based on that response, Order No. PSC-99-2496-PCO-TI, was issued September 20, 1999, setting the procedure for this docket, and establishing the hearing and prehearing dates.

Accutel did not appear at the Prehearing on March 23, 2000, and, based on that failure to appear, on April 20, 2000, Order No. PSC-00-0776-FOF-TI issued, Dismissing Accutels Response to Order to Show Cause and Imposing Fine for Violating Statutes. On May 5, 2000, Accutel filed a Motion for Reconsideration, alleging that its failure to participate was a result of counsel of record not being noticed on each of the scheduled events in this docket and not being provided with a copy of the recommendation upon which the Order Dismissing Accutels Response to Order to Show Cause and Imposing Fine for Violating Statutes was based.

The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974). (emphasis added)

Based on telephone conversations with counsel for Accutel and the fact that it did file its Prehearing Statement consistent with the Order Establishing Procedure, staff is convinced that counsel was aware of all proceedings in this docket. A review of the docket in Records and Recording, however, disclosed that only Accutel's Corporate representative had been noticed on all docket filings, and not Counsel of Record. Though Counsel for Accutel failed to file a Notice of Appearance, the filing of its Response to Order to Show Cause should be considered adequate to establish counsel's position as attorney of record and, therefore, entitled to receive copies of all filings in this docket. Accutel has, therefore, identified a mistake of law in that in that the utility was denied due process by our failure to serve its counsel with all filings in this docket. Accordingly, Accutel's Motion for Reconsideration should be granted and its Response to Order to Show Cause reinstated.

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ISSUE 2: Should this Docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendations in Issue 1, this Docket should be given a new Hearing date and a revised Order Establishing Procedure should be issued. **(Fordham)**

STAFF ANALYSIS: If the Commission approves staff's recommendations in Issue 1, this docket would be in the same posture as when Accutel first filed its Response to Order to Show Cause. Accordingly it should be given a new Hearing date and a revised Order Establishing Procedure should be issued. **(Fordham)**