



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

RECORDED AND REPORTING  
99 DEC -9 PM 4:35  
RECEIVED-PPSC

**DATE:** DECEMBER 9, 1999

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

**FROM:** DIVISION OF LEGAL SERVICES (CALDWELL) *One B/L*  
 DIVISION OF COMMUNICATIONS (BIEGALSKI) *WB*  
 DIVISION OF AUDITING/FINANCIAL ANALYSIS (WINSTON/SAMAAN) *WB*

**RE:** DOCKET NO. 990971-TX - APPLICATION FOR CERTIFICATE TO PROVIDE ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE BY C.I.O., INC.

**AGENDA:** 12/21/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** PLACE DOCKETS 990971-TX, 991663-TX, AND 991664-TX IN SEQUENCE ON AGENDA CONFERENCE SCHEDULE.

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\990971.RCM

### CASE BACKGROUND

- September 1998 - TeleConex, Inc. d/b/a TeleConex (TeleConex), a certificated alternative local exchange company (ALEC), entered into a marketing arrangement with CIO, Inc. (CIO).
- May 9, 1999 - CIO entered into a marketing agreement with Pre-Cell Solutions, Inc. (Pre-Cell), another certificated ALEC.
- May 12, 1999 - The Division of Consumer Affairs (CAF) received a complaint lodged by TeleConex against Pre-Cell regarding Family Phone Company (a.k.a. CIO) calling TeleConex's customers and telling them that TeleConex is bankrupt and going out of business.

DOCUMENT NUMBER-DATE

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PPSC-RECORDS/REPORTING

DATE: December 9, 1999

- June, 1999 - Staff received calls from TeleConex's customers who were concerned and confused regarding the phone calls and information they were provided by Family Phone Company (a.k.a. CIO) about TeleConex and Pre-Cell.
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- June 24, 1999 - Staff met with TeleConex to discuss the problems they were having with CIO. TeleConex stated that CIO was collecting money from customers on its behalf and not forwarding the monies to TeleConex. In addition, CIO was soliciting TeleConex's customers stating that TeleConex was in bankruptcy and CIO could provide the customers with a less expensive service. (Attachment A, Pages 5-8)
  - July 27, 1999 - CIO, Inc. (CIO) submitted an application for alternative local exchange service (ALEC) in the State of Florida.
  - July 30, 1999 - Staff mailed a letter to CIO stating that it needed to amend its corporate name, price list, and the application.
  - September 13, 1999 - After no response from CIO to the July 30, 1999, letter, staff mailed a certified letter to CIO requesting that the amendments be made before September 28, 1999, or staff would recommend denying its application. The letter was signed for and received on September 16, 1999.
  - September 21, 1999 - CIO submitted a revised application signed by Mr. Rick Austin along with a request to withdraw its price list. CIO stated it would submit a price list prior to providing local service.
  - September 27, 1999 - Staff requested deferral of this docket from the October 5, 1999, Agenda Conference.
  - September 28, 1999 - Pre-Cell terminated its marketing agreement with CIO for CIO's failure to remit monies collected from customers for telephone service to Pre-Cell.
  - October 1999 - Staff began receiving complaints from customers regarding CIO and Pre-Cell.
  - October 20, 1999 - Notice was sent to Mr. Richard Austin, president of CIO, by the Division of Auditing and Financial Analysis informing him of an investigation of financial records.

- November 12, 1999 - Staff received an audit report stating that CIO had failed to allow audit staff in to review financial records.
- 
- November 15, 1999 - All telephone numbers used by staff to contact CIO were disconnected.

### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant C.I.O., Inc. a certificate of public convenience and necessity to provide alternative local exchange service in Florida?

**RECOMMENDATION:** No. CIO should not be granted a certificate in order to provide alternative local exchange service in Florida. (Biegalski)

**STAFF ANALYSIS:** On July 27, 1999, CIO submitted its application in order to provide alternative local exchange service in Florida. After reviewing the application, staff determined that revisions were necessary before approving the application. On July 30, 1999, staff mailed a letter to Mr. Rick Austin, President of CIO, stating that it needed to amend its tariff and corporate filing and submit an amended application to staff for approval. Since CIO did not respond to this letter, staff mailed a certified letter to CIO on September 13, 1999, and requested receipt of the amended application by September 28, 1999. CIO submitted the required information on September 21, 1999.

Staff placed the request for approval of CIO's application on the October 5, 1999, Agenda Conference. Prior to the agenda date, staff began receiving customer complaints concerning CIO. (Attachment B, Pages 9-13) Based on the number and substance of the consumer complaints, on September 27, 1999, staff requested a deferral of this item in order to further investigate the customer complaints and the company.

It appears that CIO was collecting payments for telephone service and not forwarding the payments to TeleConex. In addition, based on staff's discussions with concerned customers, it seems that Mr. Austin solicited many of TeleConex's customers, advising

them that if they remained with TeleConex they might lose their telephone service. CIO stated that if the customers switched their service to Pre-Cell they would receive service at a lower rate. Needless to say, many TeleConex customers were confused. Mr. Austin succeeded in changing some of TeleConex's customers to Pre-Cell. After a couple of months, staff began receiving customer complaints regarding CIO and Pre-Cell. It appears that CIO began soliciting customers in order to switch them from Pre-Cell to CIO.

Staff contacted CIO and scheduled an audit for October 29, 1999. Prior to that time, Mr. Austin contacted staff and canceled the audit. To date, the audit has not been rescheduled.

In addition, on October 11, 1999, CIO filed for a name change with the Secretary of State to change the name from C.I.O., Inc. to C.I.O.'s Family Phones Inc., but has not filed the same with the Public Service Commission. Furthermore, the telephone numbers for CIO listed on its application and customer telephone bills have been disconnected.

Based on the above stated information, it appears that CIO has not demonstrated nor does staff believe CIO has the managerial capability to operate a telephone company. Staff believes granting CIO a certificate would not be in the public's interest, therefore, staff recommends the Commission deny CIO's application.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. This docket should be closed if no person whose interests are substantially affected by the proposed agency action files a protest within the 21 day protest period. If no timely protest of Issue 1 is filed this docket may be closed upon issuance of a consummating order. **(Caldwell)**

**STAFF ANALYSIS:** This docket should be closed if no person whose interests are substantially affected by the proposed agency action files a protest within the 21 day protest period. If no timely protest of Issue 1 is filed this docket may be closed upon issuance of a consummating order.

SUZANNE FANNON SUMMERLIN  
ATTORNEY AT LAW

1311-B Paul Russell Road, Suite 201  
Tallahassee, Florida 32301

TELEPHONE (850) 656-2288  
TELECOPIER (850) 656-5589

June 30, 1999

Mr. Rick Moses  
Bureau Chief  
Division of Communications  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Dear Mr. Moses:

As you requested, I am providing the following summary of our meeting on Thursday, June 24, 1999, between Teleconex and the Commission Staff. As you recall, Teleconex was represented in this meeting by Steve and Marilyn Watson and myself and the Commission Staff included yourself, Cathy Bedell, Elaine Johnson, Donna Clemons, and Ray Kennedy. Steve Watson is the owner of Teleconex, along with his wife, Marilyn, and his sons, Chris and Paul Watson.

In August 1998, Chris Watson of Teleconex first met Rick Austin and struck up a friendship. Mr. Austin proposed to become a master agent for Teleconex in the Melbourne, Florida, area. He stated he would organize agents to sell Teleconex's prepaid dial tone services through various entities such as Pak Mail stores, check cashing stores, etc., including his own check cashing company called "CIO" which stands for "Check It Out". As far as Teleconex can determine, Mr. Austin uses CIO and a company he created called "Family Phones" as marketing entities for the sale of prepaid telephone services. Mr. Austin began submitting orders to Teleconex on behalf of his agents in September 1998.

Before very long, Teleconex realized that Mr. Austin was not depositing the monies he was receiving from customers for Teleconex's services into Teleconex's account at the First Union Bank in Melbourne, Florida, as he was clearly expected to do. The arrangement had been set up to have all monies deposited into Teleconex's account and then Teleconex would send Mr. Austin the commissions he earned on the new customers he brought to Teleconex. Mr. Austin also misrepresented, without authorization from Teleconex, that he was an officer of Teleconex to many entities, including advertising agencies, banks, and others, by which method he incurred substantial financial obligations that Teleconex is currently grappling with.

At the point in March 1999 that Mr. Austin recognized that Teleconex expected immediate payment of the approximate \$74,000 in payments he had collected from customers for Teleconex's services (and this amount includes no commissions owed to Mr. Austin by Teleconex), Mr. Austin made an offer to purchase Teleconex. In the course of these discussions, it became clear that Mr. Austin had very poor credit and would be unable to carry through on any offer to buy Teleconex. At that point, Teleconex terminated its arrangement with Mr. Austin. Mr. Austin was very unhappy that Teleconex was not interested in selling the company to him, as well as the fact that he knew he owed Teleconex approximately \$74,000 and would now have no arrangement by which to collect further payments and commissions from customers for Teleconex's services.

Mr. Austin soon entered into an arrangement with Pre-Cell Solutions, Inc., to sell Pre-Cell's prepaid dial tone services. Mr. Austin took the list of Teleconex's customers that he had in his possession and used this to target Teleconex's customers. He phoned Teleconex's customers and slandered Teleconex by telling these customers that Teleconex was bankrupt and unstable and about to go out of business. Mr. Austin told these customers that they were in danger of losing their telephone service if they stayed with Teleconex. Then Mr. Austin would offer the customers \$5.00 off of their monthly bill if they switched their service to Pre-Cell. This activity caused Teleconex grievous harm by causing customers to become upset and confused, as well as causing some customers to switch their service to Pre-Cell. In addition to this campaign against Teleconex through direct contacts with Teleconex's customers, Mr. Austin has waged a war against Teleconex by constantly sending the company threatening faxes, telling lies about Teleconex to the Florida Public Service Commission Division of Consumer Affairs, and by incurring numerous financial obligations using Teleconex's name and credit without authorization.

In an effort to defend itself against these actions by Mr. Austin (and thus, CIO, Family Phones, and/or Pre-Cell), Teleconex sent its customers a notice informing them it had become aware that another company was making calls to its customers stating Teleconex was bankrupt, unstable and going out of business. In the notice, Teleconex told its customers that these statements were untrue and, if they had received such a call, they should call the Florida Public Service Commission and complain. Teleconex also told its customers they should call Teleconex's business office to straighten out any problem with their service resulting from these calls. Subsequently, Teleconex received many phone calls from upset customers and Teleconex responded to these calls. **Teleconex has never initiated calls to its customers on this topic.** It has only responded to customer inquiries.

It is necessary to respond to Mr. Austin's claim that Teleconex disconnected Mr. Austin's telephone services. Teleconex had initially set up several 800 lines for its own use. At the beginning of the relationship between

Teleconex and Mr. Austin, Mr. Austin was permitted to use some of these lines for his local service in Melbourne, Florida. When Teleconex terminated its relationship with Mr. Austin, Teleconex transferred these 800 lines back to Teleconex's own use.

Teleconex has determined that Mr. Austin, CIO, Family Phones and/or Pre-Cell have lured some customers away from Teleconex, but then failed to timely convert their service. Therefore, when Teleconex made its routine courtesy calls to customers for whom they had not received payment, and the customers confirmed that they had no desire to remain with Teleconex because they had signed up with a new provider, Teleconex ended up disconnecting customers that believed they had switched to CIO, Family Phones, or Pre-Cell. Teleconex did not know, and was not responsible to assure, whether these customers had in fact been converted to a different provider. CIO, Family Phones, Pre-Cell and/or Mr. Austin blamed Teleconex for this disconnection of service when, in fact, the customers might have paid CIO, Family Phones, Pre-Cell and/or Mr. Austin but CIO, Family Phones, Pre-Cell and/or Mr. Austin had failed to transfer their service in a timely manner.

Several customers have communicated to Teleconex that someone called them, saying they were from CIO, Family Phones and/or Pre-Cell, to attempt to get their business by stating that Teleconex was in bad financial shape and was going out of business. Attached are several customer letters as examples of this. This raises the issue of the inappropriate representation of Family Phones or CIO as a "telephone company".

Teleconex has filed a lawsuit against Mr. Austin and CIO, which was filed approximately one-half hour after a lawsuit was filed by Mr. Austin and CIO against Teleconex. Teleconex is also pursuing possible remedies with the Florida Attorney General.

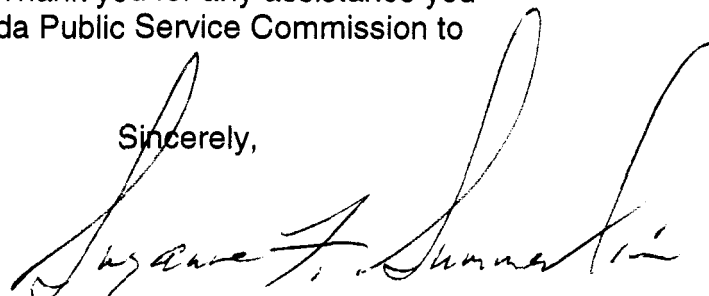
Subsequent to our meeting, you sent a list of customers that Mr. Austin had provided to you as representing his customers (presumably Pre-Cell's customers). Enclosed is a copy of three pages of that list of customers. Because this effort to trace customers is so time-consuming, Mr. Watson has investigated the customers listed on just the first three pages to illustrate the situation. All customers marked with an asterisk are former Teleconex customers that were targeted by Mr. Austin as CIO, Family Phones and/or Pre-Cell.

As an update, Teleconex was contacted by one of its customers (using resold Sprint local service) who reported she received a call Friday evening, June 25, 1999, from an individual from Pre-Cell telling her that Teleconex was unstable and going bankrupt and that she needed to switch her service to their company. She refused and called Teleconex. I have spoken directly with this

lady. She is willing to sign an affidavit to this effect. I will send it to you as soon as I receive it.

As you can see, although this can be characterized as a "dispute between two companies," it is a problem that has negatively affected the customers a great deal. Teleconex has not caused this problem. Teleconex has tried very hard to limit the harm to its customers that Mr. Austin and CIO and/or Pre-Cell have inflicted. Teleconex has suffered tremendous financial and reputation damage from these actions by Mr. Austin, CIO, Family Phones, and/or Pre-Cell. This is not to mention the severe emotional stress the whole situation has caused the owners of Teleconex, the Watson family. Thank you for any assistance you can offer as a member of the Staff of the Florida Public Service Commission to resolve this matter.

Sincerely,



Suzanne F. Summerlin

SFS/wd  
Attachments (2)  
cc: Cathy Bedell, Esq.  
Elaine Johnson  
Ray Kennedy  
Donna Clemons, Esq.  
Steve and Marilyn Watson



Dear Chris,

On May 11, 1999, I received approximately ten or eleven phone calls from a company identifying themselves at first as Teleconex, then as a related company of Teleconex. They then stated that the main company in Rensselaer was very "unstable", ready to shut off every phone dealing with that company.

They then offered to have my service by switching my service for a lesser price to their company, a more secure and stable company that would never turn my phone ~~off~~.

At first, it was a man named David who was phoning me, when I asked to speak to a supervisor to find out more about this very strange phone call, I was put on the line with a man named Gordon, who identified himself as "Gordon". He claimed he was the head supervisor of the entire company. He also seemed to be a very demanding, pushy person. He knew information that I couldn't believe he knew. He knew how much I paid every month on my phone bill, when and ~~with~~ with whom I opened my telephone account with. But, I was still suspicious.

Then, when I still refused to allow this Gordon to switch my phone service over to this new company "FAMILY PHONE SERVICE",

He became very angry and nasty. He then threatened to switch my service without my permission by the next morning. He said I could keep the same phone number but that my number would be unlisted. I reminded Gordon that the new phone books just came out two weeks ago and that they would be around for a whole year. So, it was foolish of him to say my number would be unlisted.

I said I wasn't interested, and hung up, that when he kept repeatedly phoning me over the next several hours. Demanding I switch & calling me stupid.

So, I said, give me your number, and I'll think about your offer and call you back, so he gave me 877-7278327, 727-8502 & 7278327, area code 407.

Also, on my caller ID, when the phone rang, on the screen, it stated "TELECONEX-407-7278502".

After about 6 or 7 calls, I phoned your customer service and spoke to Paul and told him what was happening concerning this Gordon and this company using your company name plus a new name and threatening to switch my service without my permission, offering me the month of May for free, not charging me until June and telling me to call you and ask for my money back for May, telling me that with your company being so "unstable", I would be left without phone service when your business went bankrupt in a week or so.

Thank you,

Sincerely yours, Sharon Faulkner

Toni Brown • 13655 NE 3<sup>rd</sup> Court #7 • North Miami, Florida 33161 • (305) 895-8438

TeleConex  
ATTN: Chris Watson  
4100 Barrancas Avenue  
Pensacola, Florida 32507

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12<sup>th</sup>, May 1999

RE: Phone calls from CIO

Dear Chris;

Hi! I hope this letter finds you and yours in the best of health, company and spirits!

I'm doing well, and am still very satisfied with my phone services from your company, however, I got a couple of phone calls last evening, on the 11<sup>th</sup> of May, from CIO, that made me a little uncomfortable. Let me explain...

At exactly 6:35 PM, Murray from CIO called me, and attempted to get me to switch my phone services from TeleConex to a different one called, The Family Phone Company. He was quite persistent, and told me that I could save myself \$5.00 a month, and still keep my current phone number, and my current deluxe package. He told me that it would only take 3 business days to switch over.

I told him that I wasn't interested in switching, and that I am satisfied where I am. He continued to explain how I would save myself some money, and I told him that I was satisfied with TeleConex, and that the cost of my services wasn't my main concern. I hung up on him when he kept trying to give me their toll-free phone number, in case I changed my mind...

I found his phone call to be a little odd, so I tried to call TeleConex to ask them what it was all about. I got no answer, because it was after business hours for you all, so I made a mental note to call you in the morning...

Then, at exactly 7:10 PM (30 minutes later), Gordon from CIO called me, and attempted to get me to switch over too! As you can well imagine, by this time I was quite suspicious of both phone calls. I told Gordon that Murray had just called me, not 30 minutes ago, and that he'd already introduced me to The Family Phone Company. Once again, I told CIO that I wasn't interested in switching. Gordon gave me this BS story about how his list of numbers to call must have been duplicated with someone else's. He asked me if I was sure that I didn't want to save myself some money, and tried to give me their toll-free number again. I told him that I'm not interested, and hung up on him before he could say another word.

Now, I don't know what was going on there, but it sounded to me like CIO was trying to sabotage the efforts of TeleConex, and quite maliciously, I might add. I'm hoping that this is not the case, because TeleConex is the best company that I've found so

far, for getting good phone services, and I don't intend to switch to any other company, as long as my services continue to be good. I consider those phone calls from CIO to be bad business on their part, and don't want to have anything to do with it.

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If I can be of assistance in helping you stop this malicious attack on your company, please feel free to call me at (305) 895-8438 at any time, day or night. I can usually be reached here all day, every day. If I'm not here, you can feel free to leave me a message, and I will return your call as soon as I get back.

I hope what CIO has done, hasn't caused much damage to your company's clientele base, though I'm sure that it did cause some damage.

I wish you the best of luck in stopping their course of action, Chris. There's nothing worse than putting your best foot forward, only to have someone stomp on it...

Take care of yourself. God bless.

Sincerely,



Toni Brown  
(305) 895-8438

To: Paul Watson  
Steve Watson  
Dick Durbin

Fr: Paul C. Wolbert

Date: May 12, 1999

Re: Telephone conversion

On May 11, 1999 about 2:00pm I was contacted by Murray from CIO regarding telephone conversion. The number on caller id reflected TELECONEX at 407 728-3844.

Murray told me that being my provider of telephone service that they felt it their obligation to tell me about a better offer that they could provide to me if I changed my telephone service. He said that my monthly billing would go down by \$5.00 per month and that I had multiple lines and would be eligible for future discounts. He did not know what the other discounts would be but, that the people who would be calling me back to verify the transfer would tell me what my new cost would be. He assured me that I would not loose any of the present services that I enjoyed on either of my lines.

He said that he could not take care of the paper work at that, time and I would have to talk to a third party to confirm my desire to transfer service. He then wanted to know when they could call back to confirm my transfer.

When I asked him who the new service was with, he said it still would be provided by bell south and the billing would be from FAMILY PHONE SERVICE. I asked him about TELECONEX again and he said that they represented FAMILY PHONE SERVICE and CIO.

If you have any further questions you can reach me at 407 306 8779.

ORIGINAL

*R & R*

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



TIMOTHY DEVLIN, DIRECTOR  
AUDITING & FINANCIAL ANALYSIS  
(850) 413-6480

# Public Service Commission

October 20, 1999

Rick Austin  
C.I.O., Inc.  
2350 Commerce Park Drive  
Palm Bay, FL 32905-7722

**Re: Docket No. 990971-TX; C.I.O., Inc.  
Audit Request; Investigation  
Audit Control No. 99-293-3-1**

Dear Mr. Austin:

The Florida Public Service Commission will investigate financial records as part of the docket to determine whether to grant a certificate to provide alternative local exchange telecommunications service in accordance with Commission audit procedures. Access will be requested to documents and records of the utility and, if necessary, supporting records for affiliate company transactions that affect regulated operations. Staff auditors may also request to review the utility's external audit working papers for the most recent independent audit. Charleston Winston, (407) 245-0846, the district office supervisor, will coordinate this audit. Questions regarding the audit or audit staff should be directed to the district supervisor or myself. My phone number is (850) 413-6487.

The Audit Access to Records rule for each industry states:

In those instances where the utility disagrees with the auditor's assessment of a reasonable response time to the audit request, the utility shall first attempt to discuss the disagreement with the auditor and reach an acceptable revised date. If agreement cannot be reached, the utility shall discuss the issue with successive levels of supervisors at the Commission until an agreement is reached.

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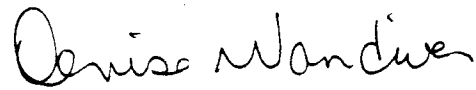
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FPSC-REC-99-293-3-1

Rick Austin  
Page 2  
October 20, 1999

A formal report is expected to be issued for internal Commission use in November 1999. A copy of the final report will be mailed to the company liaison listed in the Commission Mailing Directory.

Sincerely,



Denise N. Vandiver  
Bureau Chief - Auditing Services

DNV:sp

cc: District Office Supervisor  
Division of Legal Services  
Division of Records and Reporting  
Public Counsel