



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: NOVEMBER 19, 1998

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

FROM: DIVISION OF LEGAL SERVICES (B. KEATING, K. PEÑA) *for vmp NCB*
 DIVISION OF AUDITING AND FINANCIAL ANALYSIS (DRAPER)
 DIVISION OF COMMUNICATIONS (BIEGALSKI) *VB* *AO*

RE: DOCKET NO. ~~980336-TI~~ - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST CORAL COMMUNICATIONS, INC. FOR VIOLATION OF RULE 25-24.470, FLORIDA ADMINISTRATIVE CODE, CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED.

DOCKET NO. 980491-TI - APPLICATION FOR CERTIFICATE TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICE BY CORAL COMMUNICATIONS, INC.

AGENDA: 12/01/98 - REGULAR AGENDA - ISSUE 1 - SETTLEMENT OFFER - ISSUE 2 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\980336.RCM

CASE BACKGROUND

On April 23, 1998, by Order No. PSC-98-0573-SC-TI, in Docket Number 980336-TI, the Commission ordered Coral Communications, Inc. (Coral) to show cause in writing within 20 days of the effective date of the Order why it should not be fined \$25,000 per day for its apparent violations of Rule 25-24.470, Florida Administrative Code. After numerous negotiation meetings with staff, Coral submitted its offer of settlement on November 2, 1998, which incorporated a prior settlement offer dated May 7, 1998, as resolution to this docket. (Attachment A, Page 5-6) In addition,

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on April 6, 1998, Coral filed an application for certification as an interexchange telecommunications company.

Based on this information, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Coral Communications, Inc. to resolve the apparent violations of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity?

RECOMMENDATION: Yes. The Commission should accept the settlement offer proposed by Coral. (Biegalski)

STAFF ANALYSIS: On May 7, 1998, Coral sent staff its proposed settlement offer. On November 2, 1998, Coral revised its previous settlement offer. In its settlement offers Coral agreed to do the following:

- Coral will continue to refund any Florida customer for the charges incurred for Coral's service.
- Coral will ensure that all marketing materials are withdrawn from Florida.
- Coral will pay a \$15,000 penalty for operating in Florida without a certificate.

Staff supports Coral's proposal to make refunds to Florida consumers. Coral had previously represented to staff that it had no knowledge that its product was being marketed in Florida. Upon further investigation, it appears that Coral has been soliciting its services in Florida since 1996. Coral has stated in its settlement offer that it has made refunds to consumers in Florida in the amount of \$32,688.37. Staff supports Coral's refund efforts and believes that Florida consumers should not be responsible for charges they did not authorize. Staff also supports Coral's proposal to withdraw all marketing materials from Florida. Staff believes that Coral should not be allowed to resume marketing until its certificate to provide interexchange telecommunications service in Florida is approved and effective.

The company has satisfactorily addressed each of staff's concerns. Moreover, the company has been very cooperative in resolving all issues. Therefore, staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, in the amount of \$15,000.

ISSUE 2: Should the Commission grant Coral Communications, Inc. a certificate of public convenience and necessity to provide interexchange telecommunications service in Florida?

RECOMMENDATION: Yes. Coral Communications, Inc. should be granted Certificate No. 5771 to provide interexchange telecommunications service in Florida. (Biegalski)

STAFF ANALYSIS: Coral submitted its application to provide interexchange telecommunications service in Florida on April 6, 1998. A review of Coral's exhibit of managerial and technical qualifications exhibits satisfactory records in telecommunications service and operation. Further, a review of Coral's financial capability by the Division of Auditing and Financial Analysis indicates that the application appears adequate under the requirements of the statute.

Section 364.337(3), Florida Statutes, states:

(3) The Commission shall grant a certificate of authority to provide intrastate interexchange telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

Therefore, staff recommends the application to provide interexchange telecommunications service be approved.

ISSUE 3: Should these dockets be closed?

RECOMMENDATION: No. With the approval of Issue 1, Docket No. 980336-TI should remain open pending the remittance of the \$15,000 voluntary contribution within five business days after the order approving the settlement becomes final. Upon remittance of the \$15,000 settlement, Docket No. 980336-TI should be closed. The \$15,000 settlement should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

If staff's recommendation in Issue 2 is approved, Docket No. 980491-TI should remain open pending the processing of any protest to Issue 2 that may be 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 no protest is filed, the Order will become final, and Docket No. 980491-TI should be closed.
(B. Keating)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, Docket No. 980336-TI should remain open pending the remittance of the \$15,000 voluntary contribution within five business days after the order approving the settlement becomes final. Upon remittance of the \$15,000 settlement, Docket No. 980336-TI should be closed. The \$15,000 settlement should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

If staff's recommendation in Issue 2 is approved, Docket No. 980491-TI should remain open pending the processing of any protest to Issue 2 that may be 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 no protest is filed, the Order will become final, and Docket No. 980491-TI should be closed.

THE LUSTIGMAN FIRM, P.C.
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SHELDON S. LUSTIGMAN
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ANDREW B. LUSTIGMAN
(ADMITTED NY & NJ)

November 2, 1998

Ms. Beth Keating
State of Florida
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

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LEGAL DIVISION

RE: Coral Communications, Inc.

Dear Ms. Keating:

Reference is made to our recent conversations regarding a resolution of the above investigation. As I understand it, the PSC is willing to grant Coral the necessary certification with the condition that Coral agrees to pay a penalty of \$30,000 in settlement. As you know, Coral had previously offered to settle this matter for \$10,000. My client has authorized me to increase the offer to \$15,000 and is not inclined to go beyond that sum. Please let me know if this payment will be acceptable to settle the matter and when Coral can expect to receive its certification.

Thank you for your cooperation.

Sincerely yours,

Sheldon S. Lustigman
SHELDON S. LUSTIGMAN

JT

SSL:jt

cc: Devon Porcella, Esq.

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ADMINISTRATION
MAIL ROOM

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TELEPHONE: (861) 241-0848

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May 7, 1998

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

To Whom It May Concern:

Coral Communications would like to propose the following settlement offer as final disposition of the Show Cause Proceedings filed against Coral Communications, Docket No. 980336-TI:

- 1) Coral has refunded \$32,688.37 to Florida consumers and will continue to refund any Florida customer complaints.
- 2) Coral will make sure that all marketing materials are withdrawn from Florida.
- 3) Coral will pay a \$10,000 penalty for operating in Florida without its Certificate of Public Convenience and Necessity.

In addition, I have included a cease and desist letter that I sent to our agent who was marketing in Florida. As you can see, the agent should not have been marketing in Florida as per his contract. To my knowledge, since notification to this agent, all marketing in Florida has stopped.

As of April 4, 1998 Coral Communications ceased billing in Florida. In fact, we had screens in our system which were supposed to block any Florida billing, but the system failed. We have since found the problem and have the appropriate screens working.

I would also like to note that Coral filed its application for its tariff in Florida on April 3, 1998, Docket # 980491-TI.

Please contact me as soon as possible about this settlement offer so that I may have sufficient time to respond to the Rule to Show Cause, should we not resolve this matter through a settlement.

Very truly yours,


Devon A. Porcella