



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

DATE: JANUARY 20, 2000

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

FROM: DIVISION OF COMMUNICATIONS (BIEGALSKI)
DIVISION OF LEGAL SERVICES (CLEMONS) *RMB/KCB RMT BK*

RE: DOCKET NO. 000034-TI - 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

AGENDA: 2/1/00 - REGULAR AGENDA - ISSUE 1 - SHOW CAUSE- ISSUE 2 - PROCEDURAL MATTER - ISSUE 3 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\000034.RCM

CASE BACKGROUND

- July 21, 1994 - Carib Comm, Limited Partnership (Carib) obtained Florida Public Service Commission Interexchange Telecommunications Certificate Number 3569.
- December 10, 1998 - The 1998 Regulatory Assessment Fee forms were mailed.
- January 23, 1999 - Carib paid its 1998 Regulatory Assessment Fees and reported revenues of \$30,506.98.
- August 2, 1999 - Staff mailed a certified letter to Carib requesting information pertaining to its operator service provider rates listed in its tariff. Staff requested a response by August 17, 1999. (Attachment A, Page 7)

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

- August 5, 1999 - Carib signed for and received the certified letter. (Attachment B, Page 8)
- January 10, 2000 - Staff was informed by the Division of Administration that Carib is delinquent on the balance of its regulatory assessment fees, including statutory penalties and interest for the year 1997. In addition Carib did not remit the statutory penalties and interest for the years 1994 and 1995 for the late filing of its regulatory assessment fees.
- January 13, 2000 - To date, staff has not received a response to its certified letter.

DISCUSSION OF ISSUES

ISSUE 1: Should Carib Comm, Limited Partnership be ordered to show cause why a fine of \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, should not be imposed or Certificate Number 3569 should not be canceled?

RECOMMENDATION: Yes. The Commission should order Carib to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have Certificate Number 3569 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact or law. If Carib fails to respond to the show cause, and the fine is not paid within 10 business days after the 21 day show cause period, Certificate Number 3569 should be canceled. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(Biegalski)**

STAFF ANALYSIS: Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, 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.

Staff sent a certified letter to Carib on August 2, 1999, and requested a written response by August 17, 1999. The letter was signed for and received by Carib on August 5, 1999. To date, staff has not received a response from Carib. In this regard, it appears that Carib is in violation of Rule 25-4.043, Florida Administrative Code.

By Section 364.285, Florida Statutes, the Commission is 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).

Staff believes that Carib's conduct in failing to respond to Commission 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. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled 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, the Commission nevertheless found it appropriate to order it 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 in issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission order Carib to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have Certificate Number 3569 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact or law. If Carib fails to respond to the show cause, and the fines are not paid within 10 business days after the 21 day show cause period, Certificate Number 3569 should be canceled. If the fines are paid, they should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should the Commission order Carib Comm, Limited Partnership to provide a written response addressing the questions in staff's August 2, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's order?

RECOMMENDATION: Yes. The Commission should order Carib to provide a written response addressing the questions in staff's August 2, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's order. If the information is not provided in accordance with the Commission Order, a show cause proceeding may be initiated. **(Biegalski)**

STAFF ANALYSIS: On August 2, 1999, staff mailed a letter to Carib requesting information related to the operator service provider rates in its tariff. Staff requested a response by August 17, 1999. The letter was signed for and received on August 5, 1999, but to date, staff has not received a response.

Therefore, the commission should order Carib to provide a written response addressing the questions in staff's August 2, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's order. If the information is not provided in accordance with the Commission Order, a show cause proceeding may be initiated.

ISSUE 3: Should the Commission fine Carib Comm, Limited Partnership \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine for failure to comply with Rule 25-4.0161, Florida Administrative Code. The fine should be remitted within ten business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and fees, including statutory penalty and interest charges are not received, they should be forwarded to the Office of the Comptroller for collection. **(Biegalski)**

STAFF ANALYSIS: 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 as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Carib paid its 1997 regulatory assessment fees on January 13, 1998, but failed to remit the minimum \$50.00. In addition, staff was informed by the Division of Administration that Carib has failed to pay the statutory penalties and interest for the late filing of its 1994 and 1995 regulatory assessment fees. Therefore, the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

Accordingly, staff recommends that the Commission assess a \$500 fine for failure to comply with the Commission rules. If the fine and fees, including statutory penalty and interest charges, are not received by the Commission within ten business days after the issuance of the Consummating Order, the fine and fees, including statutory penalty and interest charges should be forwarded to the Comptroller's office for collection. If the fine is paid, it 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.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, then Carib will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not have its certificate canceled or be fined in the amount proposed. If Carib timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. This docket should also remain open pending the receipt of the information requested in staff's August 2, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's Order and to process any protest to Issue 3 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.

Staff recommends that if Carib fails to respond to the Order to Show Cause and the fine is not received within ten business days after the expiration of the show cause response period, the company's certificate should be canceled. If no timely protest of Issue 3 is filed, the fine imposed in Issue 3 and fees, including statutory penalty and interest charges, should be forwarded to the Comptroller's Office for collection, and this docket may be closed administratively upon issuance of a consummating order. (Clemons)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then Carib will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not have its certificate canceled or be fined in the amount proposed. If Carib timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. This docket should also remain open pending the receipt of the information requested in staff's August 2, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's Order and to process any protest to Issue 3 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.

Staff recommends that if Carib fails to respond to the Order to Show Cause and the fine is not received within ten business days after the expiration of the show cause response period, the company's certificate should be canceled. If no timely protest of Issue 3 is filed, the fine imposed in Issue 3 and fees, including statutory penalty and interest charges, should be forwarded to the Comptroller's Office for collection, and this docket may be closed administratively upon issuance of a consummating order.

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,

Kelly Biegalski
Regulatory Analyst
Bureau of Service Evaluation

Enclosure

Fold at 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. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.	
3. Mr. James Mahan Carib Comm, Limited Partnership 12972 S.W. 133rd Court Miami, FL 33186		4a. Article Number 4b. Service Type <input type="checkbox"/> Registered <input type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
5. Received By: (Print Name)		7. Date of Delivery 8-5-95	
6. Signature (Addressee or Agent) X Patricia Nozo		8. Addressee's Address (Only if requested and fee is paid)	

Thank you for using Return Receipt Service.

PS Form 3811, December 1994

Domestic Return Receipt