

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against BizNet Communications for violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.

DOCKET NO. 970870-TI
ORDER NO. PSC-97-1528-FOF-TI
ISSUED: December 5, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER IMPOSING FINES
AND
REQUIRING DISCONTINUATION OF UNDERLYING INTEREXCHANGE
TELECOMMUNICATIONS SERVICES

BY THE COMMISSION:

BACKGROUND

By Order No. PSC-97-1046-PCO-TI, issued September 5, 1997, we ordered BizNet Communications (BizNet) to show cause why it should not be fined \$25,000 for providing telecommunications service in Florida without certification, in violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for not responding to staff inquiries in violation of Rule 25-4.043, Florida Administrative Code. We further ordered that if the show cause proceeding was not resolved in favor of BizNet, all certificated interexchange companies would be required to discontinue providing

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intrastate long distance service for resale to BizNet at the conclusion of the proceeding.

FINES

On September 25, 1997, we received the apparent response of BizNet to Order No. PSC-97-1046-PCO-TI. We are troubled by the response's lack of authenticity. It is not on company letterhead; it contains no address; it is undated; and it does not bear any company official's or any other signature.

The response alleges that BizNet does not provide intrastate interexchange telephone services in Florida and declares that, accordingly, Rule 25-24.470, Florida Administrative Code, does not apply to it. It charges that 1st Choice Telecom distributed prepaid debit cards that BizNet did not activate because 1st Choice Telecom had not paid for them, and that it is "outrageous" to hold it responsible for the "fraudulent acts of others." It denies that the company has violated Florida law.

The response further alleges that the consumers who registered complaints with this Commission did not purchase cards in Florida and did not attempt to use the cards in Florida. It contends that we have no jurisdiction in this matter and that BizNet is not required to apply for certification in Florida. It states, moreover, that BizNet has responded to all of the Commission staff's written inquiries.

In the response, BizNet did not elect to request a hearing. The response simply indicates that the company "will respond to any written request for information in a reasonable period of time." It concludes with once again an assertion that BizNet does not provide intrastate services in Florida and, accordingly, is not required to obtain a certificate.

The contention of the response that this Commission does not have jurisdiction in this matter is unacceptable. Indeed, Seth Fargen, the president of BizNet, wrote a letter dated April 17, 1997, to the company's regulatory consultant, Cynthia Kott of Telecom Tariff Consultants, Inc., in which he described BizNet as "a remarketer of communications services." In that letter, Mr. Fargen states that BizNet purchases the underlying 800 service from U.S. Long Distance and that customers with problems or questions

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initially contact BizNet. He states further that BizNet stopped soliciting prepaid debit card sales in November 1996.

In the same letter, Mr. Fargen states that BizNet "provided its own PIN numbers to various printers with whom it contracted," and that BizNet "can suspend or terminate PINS if they are not paid for." In a letter written to the staff dated February 4, 1997, Alfred Brown, president of 1st Choice Telecom, states that his company purchases the cards pre-encoded with a PIN from BizNet. In selling PINs for prepaid debit cards to a distributor in Florida, apparently without limitation as to use, as it did to 1st Choice Telecom, and later terminating the PINs for lack of payment, BizNet exposed itself to the sale in Florida of debit cards for which it holds itself out to the public as the service provider. This places BizNet under the jurisdiction of this Commission, regardless of the state of its relationships with distributors.

In Order No. PSC-96-124-FOF-TI, issued September 26, 1996, we defined a prepaid debit card (PDC) provider as one who "buys bulk time from an underlying interexchange company and repackages and resells the time as telephone prepaid cards." We ordered "that, beginning November 30, 1996, PDC providers who sell cards in Florida, who have not filed for certification, and who are in willful violation of the requirement that they be certificated as Interexchange Telecommunications Companies shall be fined not less than \$1,000." Thus, we find that BizNet is obligated to apply in Florida for a certificate to provide resold intrastate interexchange telecommunications services.

On April 28, 1997, the staff wrote a letter to BizNet informing it that two persons had registered complaints with this Commission concerning unusable prepaid debit cards. The staff asked the company to resolve the complaints and to report the results. The company has not furnished the requested report as of the date of our decision in this matter.

We find the allegation in the response that BizNet had responded to all "written" inquiries to be evasive. Order No. PSC-97-1046-PCO-TI contains numerous citations of the staff's frustrated efforts to communicate with BizNet concerning the need for certification and for resolution of consumer complaints. These include instances of no or unreasonably delayed responses to inquiries, the unnecessary and unusual interposition of a regulatory consultant, unreported address changes, name confusion, and out-of-service telephone numbers.

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In Order No. PSC-97-1046-PCO-TI, we found BizNet's violations of Rules 25-24.470 and 25-4.043, Florida Administrative Code, to be willful in the sense intended by Section 364.285, Florida Statutes. We do not regard BizNet's apparent response to our show cause order to be satisfactory. Thus, we hereby impose on BizNet a fine of \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, and a fine of \$10,000 for violation of Rule 25-4.043, Florida Administrative Code. BizNet shall be required to pay the fines within five working days of the issuance of this Order. Upon payment, the fines shall 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 the fines are not paid after a reasonable collection effort, the matter shall be referred to the Office of the Comptroller for collection.

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DISCONTINUATION OF UNDERLYING INTRASTATE
INTEREXCHANGE TELECOMMUNICATIONS SERVICES

Rule 25-24.4701(3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited, states:

The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

We find that BizNet has operated in Florida as a reseller of interexchange telecommunications services without a certificate. Accordingly, we order all certificated interexchange carriers to discontinue providing intrastate long distance service for resale to BizNet.

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Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that a fine of \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, and a fine of \$10,000 for violation of Rule 25-4.043, Florida Administrative Code, be imposed on BizNet Communications. It is further

ORDERED that BizNet Communications shall pay the fines within five working days of the issuance of this Order. It is further

ORDERED that, upon payment, the fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. It is further

ORDERED that if the fines are not paid after a reasonable collection effort, the matter shall be referred to the Office of the Comptroller for collection. It is further

ORDERED that any certificated interexchange carrier providing service to BizNet shall discontinue the service upon issuance of this Order. It is further

ORDERED that this docket shall be closed if BizNet Communications pays the fines hereby imposed or if it fails to pay the fines within five business days of the issuance of this Order.

By ORDER of the Florida Public Service Commission, this 5th day of December, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.