

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Radiant Telecom, Inc. for apparent violation of Rules 25-4.043, F.A.C., Response to Commission Staff Inquiries, 25-24.480, F.A.C., Records & Reports; Rules Incorporated, 25-24.915, F.A.C., Tariffs and Price Lists, 25-24.920, F.A.C., Standards for Prepaid Calling Services and Consumer Disclosure, and 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 001329-TI
ORDER NO. PSC-01-1334-PAA-TI
ISSUED: June 18, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER APPROVING SETTLEMENT OFFER

AND

NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING
OFFER OF REFUND AND REFUND AND INTEREST CALCULATION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding the offer of refund and refund calculation, plus interest is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

DOCUMENT NO.
07546-01
6-18-01

CASE BACKGROUND

On May 26, 1999, Radiant Telecom, Inc. (Radiant) obtained Interexchange (IXC) Telecommunications certificate number 6098. On December 8, 1999, the Division of Administration (DOA) mailed the 1999 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 31, 2000. The DOA mailed the delinquent notice for the 1999 RAF on February 29, 2000. On June 12, 2000, our staff mailed Radiant a letter detailing three issues that the company needed to address: a consumer complaint, updating its tariff to include pre-paid calling services (PPCS), and updating its Mailing and Liaison information. Our staff requested a response by June 26, 2000. Because Radiant failed to respond to our staff's June 12, 2000, letter, our staff contacted Radiant and requested that Radiant respond by August 2, 2000. On August 25, 2000, our staff conducted a Timing and Billing Reconciliation test on a prepaid phone card issued by Radiant Telecom, Inc. Radiant did not respond to staff's inquiry, therefore, our staff opened this docket on September 6, 2000, to initiate show cause proceedings against Radiant for apparent violation of Commission rules as summarized in Table 1, pages 3-4 of this Order.

On September 14, 2000, our staff filed its recommendation for presentation at the September 26, 2000, Agenda Conference. On September 21, 2000, staff received a settlement offer from Radiant and a request to defer this docket from the September 26, 2000, Agenda Conference. The request to defer was granted by the Chairman. Radiant reported an amount of \$4,172,423.55 in Florida gross operating revenues for 1999. On October 2, 2000, Radiant submitted a check for \$7,500 in an attempt to settle this docket. The check was deposited by the DOA on October 3, 2000. During the period of December 14, 2000 to January 12, 2001, Radiant submitted data for refund calculations.

On April 18, 2001, Radiant submitted a revised settlement proposal. On May 17, 2001, Radiant reported an amount of \$31,873,653.32 in Florida gross operating revenues for 2000.

SETTLEMENT OFFER

Our staff acquired a Radiant prepaid phone card in Florida with copies of the point-of-sale display to evaluate the service

based on the information provided on the display and on the card since PPCS was not included in its tariff. Our staff found five apparent violations of Rule 25-24.920, Florida Administrative Code, on the printed material, which are detailed in Table 1 on pages 3-4 of this Order.

Our staff also made test calls to determine if the calls were charged according to the rates set forth in the printed material, since the company did not include PPCS in its tariff on file with the Commission. Staff made calls of 58- to 61-second duration until the card had a zero balance. The test call data indicated that the value of the card was reduced erratically. The time duration for each call made by our staff was consistent, yet the number of minutes deducted for each call varied from zero to 46, with most calls resulting in 33 minutes being deducted from the balance.

Also, at the time that this docket was opened, Radiant had not paid its 1999 Regulatory Assessment Fees (RAF) with the associated penalty and interest.

TABLE 1 - Summary of Radiant's Apparent Rule Violations

RULE	APPARENT VIOLATION
25-4.043, F.A.C.	Did not respond to staff's June 12, 2000, letter
25-24.480, F.A.C.	Incorrect contact information in the Master Commission Directory
25-24.915, F.A.C.	PPCS not included in tariff
25-24.920(1)(a), F.A.C.	Certificated name not on prepaid phone card
25-24.920(2)(b), F.A.C.	All surcharges not disclosed on point-of-sale material
25-24.920(6), F.A.C.	Point-of-sale material states that rates are subject to change without notice
25-24.920(7), F.A.C.	Billing in three-minute increments instead of one-minute increments
25-24.920(9), F.A.C.	Rounding up three minutes instead of one minute
25-4.0161, F.A.C.	Regulatory assessment fees

On April 18, 2001, our staff received Radiant's revised settlement offer. In its revised settlement offer, Radiant proposed the following:

- A monetary contribution of \$7,500 (received on October 2, 2000);
- To file an updated tariff that accurately discloses its service offerings and prices;
- To revise its point-of-sale materials to conform to its tariff and to the requirements of Rule 25-24.920, Florida Administrative Code, Standards for Prepaid Calling Services and Consumer Disclosure;
- To pay all past due Regulatory Assessment Fees with the associated penalty and interest;
- To keep its contact information updated in accordance with 25-24.480, Florida Administrative Code, Records & Reports; Rules Incorporated;
- To timely respond to Commission staff inquiries and to set up a procedure for handling all customer complaints and inquiries;
- To provide Commission staff with a list of names and addresses where its prepaid cards are sold in Florida;
- To waive its objection to the administrative cancellation of certificate number 6098 in the event the Commission accepts its offer and it fails to comply with the terms it has offered.

We note that Radiant has already updated its contact information, paid its 1999 RAF with penalty and interest, and submitted the required tariff revisions. Therefore, we approve the company's settlement proposal, which includes a \$7,500 voluntary contribution to the General Revenue Fund, paid prematurely on October 2, 2000. The contribution was forwarded to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund. The company has waived any objections to the administrative

cancellation of certificate number 6098 in the event its offer is approved by the Commission and it fails to comply with the terms of its settlement offer.

OFFER OF REFUND AND REFUND AND INTEREST CALCULATION

Rule 25-24.920, Florida Administrative Code, Standards for Prepaid Calling Services (PPCS) and Consumer Disclosure, requires, among other things, that the rates and charges for a prepaid calling card be clearly disclosed to the consumer at the point of sale so that the consumer can make an informed decision prior to purchase. Since Radiant did not have its PPCS offerings listed in its tariff, our staff compared the charges listed in the company's point-of-sale materials to the requirements established in Rule 25-24.920, Florida Administrative Code.

Based on the comparison, it appeared that Radiant was charging a variable service fee that was a percentage of the total cost of the call and an undisclosed amount for maintenance fees in apparent violation of Rule 25-24.920(2)(b), Florida Administrative Code. In addition, it appeared that Radiant was charging in three minute increments and rounding to the next third minute in apparent violation of Rules 25-24.920(7) and (9), Florida Administrative Code. Further, it appeared that the rates Radiant was charging exceeded the amounts disclosed on the point-of-sale materials and those allowed by Rules 25-24.920(7) and (9), Florida Administrative Code, resulting in overcharges to the customers.

On October 16, 2000, our staff met with Mr. Korhan Aydin and Mr. Kenneth Jacobi of Radiant to discuss settlement of the issues in this docket and advised them of the requirement to refund overcharges in accordance with Rule 25-4.114, Florida Administrative Code. During the meeting, Mr. Aydin provided our staff with all of the charges and conditions associated with the cards. Our staff identified three areas of overcharges which were: three-minute increment billing; variable service fees; and maintenance fees.

The refund calculations for the three-minute increment and variable service fee overcharges were submitted to our staff on December 14, 2000. Based on the calculations, Radiant had overcharged consumers a total of \$6,525.01 on intrastate calls due

to billing in three minute increments versus a one minute increment, as required by Rule Nos. 25-24.920(7) and (9), F.A.C. The variable service fee overcharges of \$10,973.72 reflect the entire amount that was charged on all intrastate calls.

Maintenance fees were deducted weekly or monthly beginning with the first use of a card and were not associated with the type of calls made on the card. The total amount of maintenance fees charged on prepaid phone cards that were sold in Florida between January 1999 and October 2000 was \$1,328,771.00. Since the maintenance fees were not associated strictly with the intrastate calls within the purview of the Commission's jurisdiction, Radiant has offered an amount based on the following formula:

$$\text{refund} = \frac{\# \text{ intrastate calls}}{\# \text{ of total calls}} \times \text{total maintenance fees charged}$$

This formula allocates a percentage of the maintenance fees to intrastate calls equal to the ratio of intrastate calls to total calls. The use of the ratio of the number of intrastate calls to total calls made approximates the portion of the cost that would be refundable on intrastate phone service. We believe that this refund calculation best approximates the appropriate refund based on the information provided.

We note that Radiant has cooperated with our staff to resolve the issues in this docket. After its meeting with staff, the company immediately corrected its software to eliminate the service and maintenance fees and to bill in one-minute increments on intrastate calls, and it updated its tariff to accurately reflect its service offerings and prices.

Therefore, we accept Radiant's refund calculation of \$32,887.61, adding interest of \$2,492.27, for a total of \$35,379.88, and its proposal to remit the refund amount by July 31, 2001, to the Commission to be forwarded to the Comptroller for deposit in the General Revenue Fund, for overcharging customers for charges not disclosed at the point of sale between January 1, 1999, and October 31, 2000. The refund shall be forwarded to the Comptroller for deposit in the General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes, since the company has no records that would identify its end customers and therefore cannot

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refund the overcharges directly. Radiant shall submit a final report as required by Rule 25-4.114, Florida Administrative Code, Refunds, by July 31, 2001.

CONCLUSION

Upon review, we find that the terms of Radiant's settlement proposal and its offer of refund and refund and interest calculation for overcharges are reasonable and appropriate. Accordingly, Radiant's settlement proposal and offer of refund and refund and interest calculation are approved. This docket shall remain open pending the completion of the refund and receipt of the final report on the refund. Thereafter, this docket shall be closed upon issuance of an Order consummating offer of refund and refund calculation plus interest, if no person whose substantial interests are affected files a protest to the offer of refund and refund calculation, plus interest within 21 days of the issuance of this Order. If the company fails to comply with the terms of its settlement offer and this Order, Certificate Number 6098 shall be canceled administratively, and this docket shall be closed if no person whose substantial interests are affected files a protest to the offer of refund and refund and interest calculation. The Commission is vested with jurisdiction over these matters pursuant to Sections 364.01, 364.04, 364.08, 364.183, 364.336 and 364.337, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Radiant Telecom, Inc.'s settlement proposal, as set forth in the body of this Order, is hereby approved. It is further

ORDERED that Radiant Telecom, Inc.'s offer of refund and refund and interest calculation, as set forth in the body of this Order, is hereby approved. It is further

ORDERED that Radiant Telecom, Inc. shall submit a final report on the refund by July 31, 2001. It is further

ORDERED that the provisions of this Order regarding approval of offer of refund and refund and interest calculation are issued as proposed agency action and shall become final and effective upon

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the receipt of the timely filing of the report on the refund and issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event the Proposed Agency Action portions of the Order becomes final and the final report on the refund is filed by July 31, 2001, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 18th day of June, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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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.

As identified in the body of this order, our action regarding approval of offer of refund and refund and interest calculation is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 9, 2001. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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 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 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.