

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 921250-TI
proceedings against CHERRY) ORDER NO. PSC-93-0269-FOF-TI
PAYMENT SYSTEMS, INC. d/b/a) ISSUED: 02/22/93
CHERRY COMMUNICATIONS for)
violation of Rule 25-4.118,)
F.A.C., Interexchange Carrier)
Selection.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER INITIATING SHOW CAUSE PROCEEDING

BY THE COMMISSION:

Rule 25-4.118(1), Florida Administrative Code, provides that:

The primary interexchange company (PIC) of a customer shall not be changed without the customer's authorization.

Cherry Payment Systems, Inc. d/b/a Cherry Communications (Cherry or the Company) is a switchless reseller of the volume discounted outbound services of other interexchange carriers. As a certificated provider of interexchange telephone service, Cherry is subject to the rules of this Commission. Cherry received its certificate to provide interexchange telecommunications service on December 4, 1992. Prior to that date the Division of Communications received one complaint from a consumer who stated her service was switched to Cherry without her knowledge or authorization. She received a copy of a letter of authorization form and said the signature which appeared as hers was forged.

We received a response from Cherry regarding the consumer's complaint. However, the Company did not offer an explanation of how or why her carrier was changed. The Company did not respond to the consumer's allegation that her signature was forged. Cherry did offer to reimburse the consumer for switching fees which she incurred.

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PSC-RECORDS/REPORTING

Additional consumer complaints indicate that by January 7, 1993, Cherry may have caused at least ten more consumers' long distance carriers to be changed without the consumers' knowledge or authorization. Moreover, the Company was named as the marketing agent submitting the Letter of Agency (LOA) in several of the complaints filed against Matrix Telecom (Matrix). Matrix asserts that Cherry submitted fraudulent requests for carrier changes. The following is an overview of the complaints against Cherry:

- 1) Consumers reported false and misleading marketing techniques. Two of the complaints indicate that marketing agents aggressively attempted to get consumers to sign by offering free long distance service to victims of Hurricane Andrew. The consumers signing up for this service stated that they were under the impression the promotion was a goodwill gesture being offered to hurricane victims and that they were not told that their long distance carrier would be switched.
- 2) Consumers did not find out that their carrier had been switched until they received a bill from their local exchange company reflecting the \$1.49 PIC change charge and long distance charges from Matrix or Sprint Communications.
- 3) Consumers stated that the Company offered no explanation when they made inquiries to Cherry Communications about why their service was switched without authorization.
- 4) Consumers reported their service was switched after minor children signed letters of authorization.
- 5) Consumers were upset that their telephone calls had not been handled by their preferred carrier. In some cases consumers believed they were charged more than they would have been charged by their preferred carrier because of special discount plans they had with their preferred carrier.
- 6) Consumers were concerned that they would incur PIC change charges from the local exchange company (LEC).
- 7) Consumers were angry that they had been inconvenienced by having to contact various telephone companies and regulatory agencies in order to correct the situation.

Apparently Florida is not the only state experiencing numerous complaints against Cherry regarding unauthorized carrier changes. The Ohio Public Utilities Commission reported receiving 200 slamming complaints against the Company in the 60 days preceding January 7, 1993. Complaints have also been filed in Texas and Tennessee. At least 25 consumers in Illinois have filed complaints with the Illinois Commerce Commission which continues to receive complaints daily. In addition, the Illinois Attorney General's Office reported that it is currently reviewing complaints against Cherry and is considering whether or not to pursue legal action against the Company.

Under the circumstances, we find that Cherry Communications shall be required to show why it should not be fined up to \$25,000 pursuant to Section 364.285(1), Florida Statutes, or have its certificate revoked pursuant to Rule 25-24.474(1), Florida Administrative Code for violation of Rule 25-4.118, Florida Administrative Code which provides that "The primary interexchange company (PIC) of a customer shall not be changed without the customer's authorization."

By January 7, 1993, we had received responses from Cherry Communications to several of the complaints. In the responses, Cherry generally failed to offer a reasonable explanation of why the service was changed.

Rule 25-4.118(2), Florida Administrative Code, which was designed to protect consumers from unauthorized PIC changes, provides in part that:

A certificated IXC that will be billing customers in its name may submit a PIC change request, other than a customer-initiated PIC change, directly or through another IXC, to a LEC only if it has certified to the LEC that at least one of the following actions has occurred prior to the PIC change request:

(a) the IXC has on hand a ballot or letter from the customer requesting such change; or

(b) the customer initiates a call to an automated 800 number and through a sequence of prompts, confirms the customer's requested change; or

(c) the customer's requested change is verified through a qualified independent firm which is unaffiliated with any IXC; or

(d) the IXC has received a customer request to change his PIC and has responded within three by mailing of an information package that includes a prepaid, returnable postcard and an additional 14 days have passed before the IXC submits the PIC change to the LEC. The information package should contain any information required by Rule 25-4.118(3). (emphasis added)

Upon review, Cherry shall be ordered to explain which of the foregoing conditions it certified had taken place prior to submitting the PIC change for each of the consumers who filed complaints with this Commission prior to January 7, 1993. We find this to be necessary because Cherry's responses to consumer complaints do not adequately address the allegations made in the complaints, nor do they offer a reasonable explanation of why the consumer's long distance carrier was changed.

Therefore, it is

ORDERED by the Florida Public Service Commission that Cherry Communications is hereby required to show cause why it should not have its certificate cancelled, or pay a fine of \$25,000, for submitting unauthorized PIC changes and causing an excessive number of customer complaints to be filed. It is further


ORDERED that Cherry Communications shall explain which method of verification it certified for each complaint filed with this Commission prior to January 7, 1993. It is further

ORDERED that this Docket shall remain open pending resolution of the show cause process. It is further

ORDERED that if Cherry Communications fails to respond to the Show Cause Order as set forth below, the non-response shall be deemed a default. In such a circumstance, Certificate Number 3134 shall be cancelled without further Commission action and this Docket shall be closed.

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By ORDER of the Florida Public Service Commission this 22nd
day of February, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

CWM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 15, 1993.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida

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Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.