

Talbott
Vandiver

FLORIDA PUBLIC SERVICE COMMISSION
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REC-VED

MEMORANDUM

November 20, 1997

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

FROM: DIVISION OF LEGAL SERVICES (COX) *WPC*
DIVISION OF COMMUNICATIONS (BIEGALSKI) *W.C.*

RE: DOCKET NO 971299-TI - INITIATION OF SHOW CAUSE
PROCEEDING AGAINST PREPAY USA TELECOM 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.

AGENDA: 12/02/97 - REGULAR AGENDA - ISSUE 1 SHOW CAUSE
ISSUE 2 - PROPOSED AGENCY ACTION INTERESTED
PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\971299TI.RCM

CASE BACKGROUND

Staff received information that PrePay USA Telecom (PrePay) may be providing debit card services without a certificate from this Commission. On February 5, 1997, staff sent a letter to PrePay requesting information to help determine if certification is required. Staff did not receive a response to this letter. On March 10, 1997, staff sent a certified letter requesting a response to the February 5, 1997 letter by March 25, 1997. Staff received PrePay's response on March 24, 1997. Based on PrePay's response that every card sold by PrePay has their name as provider of service and customer service number printed on the back of the card, staff mailed an application for interexchange telecommunications service to PrePay on March 24, 1997. On June 13, 1997, Mr. Mead, president of PrePay, contacted staff and requested a second application. On July 31, 1997, staff sent a certified letter to PrePay alerting them the completed application had not been received. The United States Postal Service returned the letter stamped "Unclaimed". Staff attempted to contact PrePay on October 1, 1997, but to date, staff's ~~attempt~~ has not been

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returned and the completed application has not been received. Therefore, we believe the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order PrePay USA Telecom to show cause in writing why a fine of \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for violation of Rule 25-4.043, Florida Administrative Code, should not be assessed?

RECOMMENDATION: Yes. Due to PrePay's unresponsiveness to staff inquiries and apparent provision of telecommunications service without a certificate, staff believes the Commission should require PrePay to show cause in writing within 20 days of the issuance of the Commission's Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response must contain specific disputed allegations of fact or law. If PrePay fails to respond to the show cause, the fine will be deemed assessed. If the fine is not paid after reasonable collection efforts by the Commission, it should be forwarded to the Office of the Comptroller for collection. If the fine is paid, it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (Biegalski)

STAFF ANALYSIS: Rule 25-24.470, Florida Administrative Code, states:

No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted. However, acquisition of equipment and facilities, advertising and other promotional activities may begin prior to the effective date of the certificate at the applicant's risk that it may not be granted. In any customer contacts or advertisements prior to certification, the applicant must advise the

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customer that certification has not and may never be granted.

On February 5, 1997, staff received information that PrePay may be providing intrastate interexchange telecommunications service through the instrument of debit cards. Staff mailed a certified letter to PrePay informing it of its responsibility to obtain a certificate in order to provide debit card services. Staff included a questionnaire with the letter and requested a return date of February 28, 1997. On March 24, 1997, PrePay responded to staff's questionnaire. Based on PrePay's answers to the questionnaire, and the definition of a debit card provider as defined in Order PSC-96-1224-FOF-TI, staff determined that certification was necessary. However, to date, staff has not received the completed application. Therefore, PrePay appears to be operating in violation of Rule 25-24.470, Florida Administrative Code, by offering telecommunications service without a certificate.

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, states that "...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." PrePay was late in responding to the first staff inquiry and has yet to respond to any subsequent letters sent to PrePay by staff.

In previous dockets involving companies operating without a certificate and not responding to staff inquiries, fines and settlements have ranged up to \$40,714. Staff believes that a fine of \$25,000 for operating without a certificate and a fine of \$10,000 for failure to respond to staff inquiries are appropriate. Therefore, due to PrePay's unresponsiveness to staff inquiries and apparent provision of telecommunications service without a certificate, staff recommends that the Commission should issue a show cause order.

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ISSUE 2: Should the Commission order all certificated interexchange companies (IXCs) to discontinue providing interexchange telecommunications service to PrePay pursuant to Rule 25-24.4701(3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited?

RECOMMENDATION: Yes. It appears that PrePay may be operating in Florida without a certificate in violation of Rule 25-24.4701(3), Florida Administrative Code. The order should state that any IXC providing service to the company must contact the Commission at the conclusion of the show cause response period to determine if the show cause proceeding has been concluded. (Biegalski)

STAFF ANALYSIS: 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.

It appears that PrePay may be operating in Florida without a certificate. Accordingly, staff recommends that the Commission order all certificated IXCs to discontinue providing intrastate long distance service for resale to this company at the conclusion of the show cause proceeding. If the company is operating as a distributor, it will not have ordered 800 number network access; therefore the actions will not affect a distributor's business. The order should state that any IXC providing service to the company must contact the Commission at the conclusion of the show cause response period to determine if the show cause proceeding has been concluded.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, an Order to Show Cause will be issued. If PrePay timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. The docket should also remain open to process 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 PrePay does not respond to the Commission's Order to Show Cause, the fine should be assessed. If no timely protest of Issue 2 is filed and PrePay fails to respond to the Order to Show Cause, this docket may be closed. (Cox)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, an Order to Show Cause will be issued. If PrePay timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. The docket should also remain open pending the resolution 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 PrePay does not respond to the Commission's Order to Show Cause, the fine should be assessed. If no timely protest of Issue 2 is filed and PrePay fails to respond to the Order to Show Cause, this docket may be closed.