RECEIVED
97 DEC 18 PM 2:48
FLORIDA PUBLIC SERVICE COMM.
DIVISION OF APPEALS

IN THE STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

BRANDON S. PETERS,

Petitioner.

______________________/

971629-TP

PETITION FOR DECLARATORY STATEMENT

Petitioner, Brandon S. Peters ("Peters"), hereby seeks a declaratory statement as to the applicability of Rule 25-4.118, F.A.C., to the following facts:

1. Peters is a citizen of the state of Florida. He resides at 916 Laurel Avenue, Orlando, Orange County, Florida 32803.

2. Parcel Consultants, Inc. ("Parcel Consultants") is a New Jersey corporation which transacts business in the state of Florida through its subsidiary, Minimum Rate Pricing, Inc. ("Minimum Rate Pricing"). Parcel Consultants owns 100% of the outstanding capital stock of Minimum Rate Pricing.

3. Minimum Rate Pricing is a New Jersey corporation licensed to do business in the state of Florida.

4. Parcel Consultants and Minimum Rate Pricing are providers of interstate telecommunications services.

5. Peters and his wife are telephone service account holders of BellSouth Telecommunications, Inc. ("BellSouth"). BellSouth provides the Peters' local residential telephone service and coordinates the Peters' access to long distance telephone service carriers.

6. Prior to June 4, 1997, Peters' long distance telephone service carrier was AT&T.

DOCUMENT NUMBER-DATE
12994 DEC 19 97
FPSC-RECORDS/REPORTING

7. On or about May 5, 1997, Minimum Rate Pricing contacted Peters to describe Minimum Rate Pricing's rate plan and obtain authorization to change Peters' long distance carrier from AT&T to Minimum Rate Pricing. Peters gave Minimum Rate Pricing authorization to execute the requested change based upon Minimum Rate Pricing's representations that it could save Peters money on his long distance telephone bills.

8. Accordingly, on or about June 4, 1997, Minimum Rate Pricing instructed BellSouth to change Peters' long distance carrier from AT&T to Minimum Rate Pricing, and BellSouth did so.

9. Peters became dissatisfied with Minimum Rate Pricing after learning that he could have lower long distance telephone bills by re-subscribing as a customer of AT&T. Therefore, on or about June 12, 1997, Peters instructed AT&T to notify BellSouth that he wanted to terminate Minimum Rate Pricing as his residential long distance carrier and restore AT&T to that status.

10. BellSouth immediately restored AT&T as Peters' long distance carrier. However, on or about June 19, 1997, Minimum Rate Pricing changed Peters' long distance carrier back to Minimum Rate Pricing without Peters' knowledge or consent.

11. On or about July 8, 1997, Peters again instructed AT&T to notify BellSouth that he wanted to terminate Minimum Rate Pricing as his long distance carrier and restore AT&T to that status.

12. BellSouth immediately restored AT&T as Peters' long distance carrier. However, on or about July 15, 1997, Minimum Rate Pricing once again changed Peters' long distance carrier back to Minimum Rate Pricing without Peters' knowledge or consent.

13. On or about August 21, 1997, the Peters again instructed AT&T to notify BellSouth that he wanted to terminate Minimum Rate Pricing as his long distance carrier and restore AT&T to that position. BellSouth did so on August 25, 1997.

14. As a direct and proximate result of Minimum Rate Pricing's changing Peters' long distance carrier without his knowledge or consent, Minimum Rate Pricing caused Peters to incur multiple "switching fees" imposed by BellSouth. In addition, Peters was forced to pay Minimum Rate Pricing's higher long distance rates during those periods of time he was involuntarily denied access to the less expensive long distance telephone service provided by AT&T.

15. Peters believes that by changing his long distance carrier without his knowledge or consent, Parcel Consultants and Minimum Rate Pricing violated Rule 25-4.118, F.A.C. Peters' attorney notified these companies of their violations of that regulation by correspondence dated November 3, 1997, a copy of which is attached hereto as "Exhibit A."

16. Counsel for Parcel Consultants and Minimum Rate Pricing responded to Peters' attorney in correspondence dated November 25, 1997, a copy of which is attached hereto as "Exhibit B."

17. Peters' attorney replied to counsel for Parcel Consultants and Minimum Rate Pricing in correspondence dated December 4, 1997, a copy of which is attached hereto as "Exhibit C."

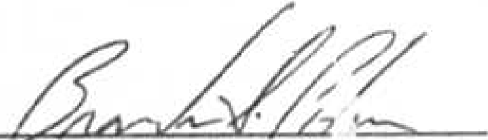
18. Parcel Consultants and Minimum Rate Pricing have taken the position that Minimum Rate Pricing's tariff (Section 2.2.1) allows them to circumvent the verification

procedures set forth in Rule 25-4.118, F.A.C., simply because that tariff has been "accepted by the Florida Public Service Commission."

19. Petitioner is in doubt as to the applicability of Rule 25-4.118, F.A.C., to the foregoing facts.

WHEREFORE, Petitioner requests a declaratory statement concerning the applicability of Rule 25-4.118, F.A.C., to the circumstances set forth herein.

DATED this 16th day of December, 1997.



BRANDON S. PETERS
916 Laurel Avenue
Orlando, Florida 32803
Telephone: (407) 895-3496
Fax: (407) 423-1831

Petitioner

DEAN, MEAD, EGERTON, BLOODWORTH, CAPOUANO & BOZARTH, P. A.
ATTORNEYS AND COUNSELORS AT LAW

P. O. BOX 2346
ORLANDO, FLORIDA 32802-2346

800 NORTH MAGNOLIA AVENUE
SUITE 1500
ORLANDO, FLORIDA 32803

(407) 841-1200
FAX (407) 423-183-

WRITER'S DIRECT DIAL
(407) 428-5128

November 3, 1997

VIA U.S. AND CERTIFIED MAIL
<u>RETURN RECEIPT REQUESTED</u>

Minimum Rate Pricing, Inc.
Parcel Consultants, Inc.
ATTN. Mr. Thomas N. Salzano
ATTN. Mr. Francis A. Keena
300 Broadacres Drive
P.O. Box 8000
Bloomfield, NJ 07003

RE: Slamming/Brandon and Susan Peters

Gentlemen:

This law firm represents Brandon and Susan Peters. On two separate occasions this summer, your company's agents caused the Peters' local telephone service provider to switch the Peters' long distance carrier from AT&T to your company without the Peters' knowledge or consent. As you know, that conduct is inappropriate under both Florida and federal law. <u>See, e.g.</u>, 47 U.S.C. §§ 206, 207, 258(a); 47 CFR § 64.1100; and Florida Administrative Code § 25-4.118.

After a thorough investigation of this matter and numerous conversations with state and federal enforcement officials, we are prepared to file a complaint against you and your companies in federal district court. Under the applicable law, our clients are entitled to recover their out-of-pocket losses, punitive damages and interest on those amounts, together with their costs and attorneys' fees.

If you would like to resolve this matter short of litigation, you may tender a payment of $7,000.00 to my attention no later than November 17, 1997. Should you fail to meet that deadline, we are instructed to file suit immediately.

Please be advised that our extensive review of public records reveals the existence of a nationwide class of plaintiffs who have been similarly injured by your inappropriate business

EXHIBIT
A

IN BREVARD COUNTY
DEAN, MEAD, SPIELVOGEL, GOLDMAN & BOYD

IN FORT PIERCE
DEAN, MEAD & MINTON

practices. If it becomes necessary to file suit against you, we will associate additional counsel to represent those individuals in a class action.

Approximately $6,900.00 of the amount we have demanded represents attorneys' fees and costs incurred by the Peters during our initial efforts on their behalf. Of course, that figure will increase substantially after November 17, when the Peters' offer to settle this case for any amount is withdrawn.

If you or your attorneys would like to discuss the contents of this letter or the specific grounds of the lawsuit we plan to file in any respect, I can be reached at (407) 428-5128. In the event you fail to respond, our next communication will be in the form of a Summons and Complaint.

Sincerely,

Anthony Deglomine, III

ATD:jl

cc: Mr. and Mrs. Brandon S. Peters
Brian T. Wilson, Esq.
Michael J. Beaudine, Esq.

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.
A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW
TENTH FLOOR
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 861-0870
FAX: (202) 429-0657

November 25, 1997

Anthony Deglomine, III
Dean, Mead, Egerton, Bloodworth,
Capon & Bozarth, P.A.
800 North Magnolia Avenue
Suite 1500
Orlando, Florida 32803

Re: Brandon and Susan Peters

Dear Mr. Deglomine:

This is in further regard to our telephone conversation and your letter of November 3, 1997 to my client Minimum Rate Pricing, Inc. My client takes your allegations very seriously and therefore I will respond to you in detail.

During our conversation, it became evident to me that you may not have complete facts regarding this matter. In fact, your client's telephone service was switched to MRP with their full knowledge and approval.

Mr. Peters was first contacted by telephone on May 5, 1997 to inquire whether he would be interested in switching to MRP's long distant service. Once Mr. Peters expressed his agreement to change to MRP, he was transferred to a separate confirmation operator who then confirmed that understanding during a second extensive telephone interview. As part of MRP's quality control process, this confirmation call is taped with the customer's consent. For your convenience, I am enclosing a copy of the taped conversation with your client for your independent review. Attachment A. Mr. Peters is obviously very articulate and it is quite clear that he fully understood that he was changing services. He engages in an extensive conversation with the MRP operator regarding his prior AT&T service, which apparently conditioned a reduction in basic interstate long distance rates on certain minimum use requirements. MRP does not impose such usage conditions. Mr. Peters can be heard considering this and deciding to "try the MRP service" to see whether it suits his needs better, understanding that he can cancel at any time by calling the company's toll-free number.

EXHIBIT
B

DEC - 1 1997

Notwithstanding this confirmation, Mr. Peters' service did not commence immediately. Under MRP's program, rather he first received a "welcome package" by certified mail that again explains the MRP program. Attachment B. This mailing included a post paid reply card that afforded Mr. Peters an additional 14 days to cancel before his MRP service was subsequently activated. Mr. Peters did not return the card and his MRP service was activated.

Mr. Peters made his first call through MRP service on June 4, 1997 and remained a subscriber until August 8, 1997. During that period he made $25.56 in long distance calls. All bills were paid in full. Apparently, sometime during that period, Mr. Peters decided to move to another interstate carrier. However, he did not notify MRP of that decision as required by the terms of Mr. Peters service. Again, this requirement was carefully explained to Mr. Peters in the course of the confirmation call. In the tape, you can hear the MRP oper or explaining this condition to Mr. Peters and it is very clear that Mr. Peters understood th t requirement. Indeed, he repeats the requirement and can be heard taking pains to be sure he has the 800 cancellation number. Moreover, you will note that the cancellation notice requirement is restated in the third paragraph of the welcome package introductory letter.

The caption of your letter refers to "slamming", the practice of switching an individual's long distance service without their authorization. It is evident from the facts pertaining to your client that MRP does not engage in such practices. Rather, all of MRP's rates and practices including subscriber cancellation requirements are in strict compliance with MRP tariffs that have been filed and accepted by the Florida Public Service Commission. For your convenience, I am attaching the MRP's entire Florida tariff.

Frankly, under the circumstances, I do not understand your allegations that MRP's conduct in this matter constitutes a violation of state or federal law. Nevertheless, MRP does assure its subscribers of their satisfaction and the company is willing to refund any amounts that Mr. Peters would have saved under his prior carrier's "True Saving" program. Given a total bill of $25 over two and a half months, we believe Mr. Peters saved money with MRP. Nonetheless, as an accommodation to you, the company is prepared to refund the entire $25 charged during that period.

I would be pleased to discuss this matter further with you after you have had an opportunity to consider this letter and enclosures.

Sincerely,

Eric M. Rubin

DEAN, MEAD, EGERTON, BLOODWORTH, CAPOUANO & BOZARTH, P.A.
ATTORNEYS AND COUNSELORS AT LAW

P. O. BOX 2346
ORLANDO, FLORIDA 32802-2346

800 NORTH MAGNOLIA AVENUE
SUITE 1500
ORLANDO, FLORIDA 32803

(407) [illegible]
FAX (407) [illegible]

WRITER'S DIRECT DIAL
(407) 428-5128

December 4, 1997

<u>**VIA TELECOPIER**</u>

Eric M. Rubin, Esq.
Rubin, Winston, Diercks,
Harris & Cooke, L.L.P.
1333 New Hampshire Ave., N.W.
Tenth Floor
Washington, DC 20036

RE: Brandon and Susan Peters

Dear Mr. Rubin:

This will acknowledge receipt of your November 25, 1997 correspondence concerning my above-referenced clients. Contrary to your interpretation of our recent telephone conversation, I have always been aware of the fact that the Peters *initially* agreed to try your client's long distance telephone service. However, once the Peters elected to terminate that service and re-subscribe with AT&T, Minimum Rate Pricing was legally bound to follow the verification procedures set forth in 47 CFR § 64.1100 and FAC § 25-4.118 before re-connecting the Peters to Minimum Rate Pricing. Failure to follow those procedures is clearly actionable under 47 U.S.C. §§ 206, 207, 258. Moreover, because Minimum Rate Pricing slammed the Peters on more than one occasion — June 19, 1997 *and* July 15, 1997 — its conduct may be actionable under the federal and state RICO statutes as a pattern of racketeering activity designed to perpetrate a fraud on consumers. <u>See, e.g.</u>, 18 U.S.C. § 1962; 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud).

The thrust of your defense seems to be that certain statements made during Mr. Peters' May 5, 1997 telephone conversation with your client's confirmation operator have the effect of exempting Minimum Rate Pricing from compliance with the state and federally mandated verification procedures. We are not persuaded by your logic. First, there is not a single reported case in which a court has sustained a defense predicated upon a consumer's unwitting waiver of a right set forth in consumer protection legislation. Second, the fact that Minimum Rate Pricing's tariffs have been "accepted by the Florida Public Service Commission" is of no legal moment. As I am sure you know, a tariff is nothing more than a business plan filed with the federal and state enforcement agencies having jurisdiction over your client's activities. Tariff provisions, like the one at issue in this case, which directly conflict with the requirements

EXHIBIT
C

of laws enacted by Congress and the Florida Legislature or regulations promulgated by the federal and state enforcement agencies are void *ab initio*. Our position on this point is reinforced by conversations we had with federal and state enforcement officials just last month. In short, those officials take a very dim view of arguments which misconstrue the tariff approval process as somehow sanctioning violations of the very laws their agencies are charged with upholding.

If you choose to defend this case on the grounds you set forth in your letter, we are quite confident that a sizeable judgment in favor of the Peters and any class Plaintiffs will likely be entered. Nevertheless, should your client prefer to reconsider our clients' original settlement offer, we hereby renew it for a period of one (1) week from the date of this letter.

In the event we do not hear from you by December 11, 1997, we will assume that Minimum Rate Pricing is uninterested in resolving this matter short of litigation and will counsel Mr. and Mrs. Peters that proceeding with their lawsuit is the most advisable course of action. Whether they will join the class being formed by other attorneys has not been determined.

Sincerely,

Anthony Deglomine, III

ATD:jl

cc: Mr. and Mrs. Brandon S. Peters
Brian T. Wilson, Esq.
Michael J. Beaudine, Esq.