

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED
APR 19 11:33 AM '01
REGISTRATION

DATE: APRIL 19, 2001

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

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *BK*
DIVISION OF COMPETITIVE SERVICES (K. CRAIG) *YC* *KA*

RE: DOCKET NO. 010310-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST NETFAX COMMUNICATIONS, INC. FOR APPARENT VIOLATION OF RULES 25-24.910, F.A.C., CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED, AND 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES.

AGENDA: 05/01/01 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\010310.RCM

CASE BACKGROUND

- January 4, 2001 - Staff received a fax from Mr. Ross Rosenberg, P.A., representing two companies that had entered into a contract with a Florida corporation, Netfax Communications, Inc. to distribute prepaid calling cards (Attachment A, page 9). Netfax Communications, Inc. is apparently doing business as NFT Communications, yet does not have that name registered as a fictitious name with the Division of Corporations. Mr. Rosenberg expressed concern that neither Netfax Communications, Inc. nor NFT Communications are registered with the Florida Public Service Commission as either prepaid calling services providers or resellers. A copy of a prepaid calling card, identifying NFT Communications as the network provider, was provided by Mr. Rosenberg. (Attachment B, page 10)

DOCUMENT NUMBER-DATE

04854 APR 19 2001

FDSC-RECORDS & REPORTING

- January 4, 2001 - Staff sent Netfax Communications, Inc. a certified letter in which it informed the company that a certificate from the Florida Public Service Commission was required to provide interexchange telecommunications services in Florida. Netfax Communications, Inc. was also instructed to complete and return an application by January 19, 2001. (Attachment C, page 11)
- January 9, 2001 - The certified letter return receipt from the January 4, 2001 letter was signed for and received by the company. (Attachment D, page 12)
- February 5, 2001 - Having received no written response to its January 4, 2001 letter, staff sent Netfax Communications, Inc. a second certified letter which requested completion of an application for certification to provide long distance interexchange services in Florida. Staff requested a written response by February 20, 2001. (Attachment E, page 13)
- February 7, 2001 - The certified letter return receipt from the second letter, dated February 5, 2001, was signed for and received by the company. (Attachment F, page 14)
- March 12, 2001 - After receiving no written response to either the January 4, 2001, or February 5, 2001, certified letters, staff opened this docket to investigate whether Netfax Communications, Inc. should be required to show cause for apparent violation of Rules 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.
- April 10, 2001 - Mr. Michael Greenfield, a representative of the company, called and left two messages on staff's voice mail. An attempt to reach Mr. Greenfield was unsuccessful, as his voice mailbox was full.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.183, 364.285, 364.33, and 364.337, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Netfax Communications, Inc. (Netfax) to show cause why it should not be fined \$25,000 for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required?

RECOMMENDATION: Yes. The Commission should order Netfax to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The company's response should contain specific allegations of fact and law. If Netfax fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the fine shall be deemed assessed. If Netfax pays the fine, it should be remitted to the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes. If the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection. **(B. Keating/K. Craig)**

STAFF ANALYSIS: Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, states:

A company shall not provide prepaid calling services without first obtaining a certificate of public convenience and necessity as a local exchange company, alternative local exchange company, or interexchange company.

Staff was notified of Netfax's operations on January 4, 2001, through a fax from Mr. Ross Rosenberg, P.A (Attachment A, page 9). Mr. Rosenberg represents two companies that had entered into a contract with Netfax, wherein Netfax agreed to provide them prepaid calling services, including personal identification numbers (PINs) and customer service. Mr. Rosenberg's clients would serve as wholesale distributors of the prepaid calling cards. Staff has determined that Netfax is not registered as a prepaid calling services provider or reseller with the Florida Public Service Commission. Also, Netfax Communications, Inc. appears to be doing business as NFT Communications, as shown on a copy of a prepaid calling card that was provided to staff (Attachment B, page 10).

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NFT Communications is not registered as a fictitious name with the Division of Corporations.

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Staff believes that Netfax's conduct, by providing prepaid calling services to wholesale distributors for dispatch to retail customers, is provisioning long distance interexchange services without a certificate of public convenience and necessity, in apparent violation of Commission Rule 25-24.910, Florida Administrative Code, and has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating to Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as Netfax's conduct at issue here, would meet the standard for a "willful violation."

Therefore, the Commission should order Netfax to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The company's response should contain specific allegations of fact and law. If Netfax fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the fine shall be deemed assessed. If Netfax pays the fine, it should be remitted to the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes. If the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the

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show cause response period, it should be forwarded to the Office of the Comptroller for collection.

ISSUE 2: Should the Commission order Netfax Communications, Inc. (Netfax) to show cause why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. The Commission should order Netfax to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact and law. If Netfax fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing waived, and the fine shall be deemed assessed. If Netfax pays the fine, it should be remitted to the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes. If the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection. **(B. Keating/K. Craig)**

STAFF ANALYSIS: Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, states:

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.

Staff sent a certified letter to Netfax, dated January 4, 2001, in which staff enclosed an application to provide long distance interexchange service and a copy of applicable rules for prepaid calling service providers and requested a written response by January 19, 2001 (Attachment C, page 11). On January 9, 2001, the certified letter return receipt from the January 4, 2001 letter was signed for and received by the company (Attachment D, page 12). Staff received a telephone call from Netfax stating that the application would be completed. Staff informed the company that a written response outlining its intentions should be submitted by January 19, 2001.

Upon receiving no response, a second certified letter, dated February 5, 2001, was sent to Netfax requesting completion of an application, or an explanation of how the company's offering of

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prepaid calling services do not qualify as a "telecommunications company" under Section 364.02, Florida Statutes (Attachment E, page 13). Staff requested a written response by February 20, 2001. On February 7, 2001, the certified letter return receipt from the second letter, dated February 5, 2001, was signed for and received by the company (Attachment F, page 14). On March 12, 2001, after receiving no written response to either certified letter, staff opened this docket to investigate whether Netfax should be required to show cause for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. Mr. Michael Greenfield, a representative of the company, called and left two messages on staff's voice mail on April 10, 2001, however an attempt to reach Mr. Greenfield was unsuccessful as his voice mailbox was full.

Staff believes that Netfax's apparent failure to respond to Commission staff inquiries constitutes a willful violation of a lawful rule of the Florida Public Service Commission under the same legal analysis as set forth in Issue 1. Therefore, the Commission should order Netfax to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact and law. If Netfax fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing waived, and the fine shall be deemed assessed. If Netfax pays the fine, it should be remitted to the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes. If the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendations in Issues 1 and 2 are approved, Netfax will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amounts proposed. If Netfax timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceedings. If Netfax fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing waived, and the fines shall be deemed assessed. If the company fails to respond to the Order to Show cause and the fines are not paid within ten business days after the expiration of the show cause response period, they should be forwarded to the Office of the Comptroller for collection and this docket may be closed administratively. **(B. Keating)**

STAFF ANALYSIS: If staff's recommendations in Issues 1 and 2 are approved, Netfax will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amounts proposed. If Netfax timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceedings. If Netfax fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing waived, and the fines shall be deemed assessed. If the company fails to respond to the Order to Show cause and the fines are not paid within ten business days after the expiration of the show cause response period, they should be forwarded to the Office of the Comptroller for collection and this docket may be closed administratively.

LAW OFFICES
ROSS ROSENBERG, P.A.

ONE DATRAN CENTER - SUITE 910
9100 SOUTH DADELAND BOULEVARD
MIAMI, FLORIDA 33156-7815

PHONE: (305) 670-1010
FAX: (305) 670-0228

January 4, 2001

Rick Moses
Florida Public Service Commission

Via Telefax (850) 413-6583

Re: **Netfax Communications, Inc.**

Dear Mr. Moses:

I represent two companies, **Intelecall Communications and Americard Dispensing Corp.**, that entered into contracts with a Florida corporation, **Netfax Communications, Inc.** (also known as **NFT Communications**), which agreed to provide my clients with prepaid phone calling card services, PINs, and customer service to the phonecard retail customers. **Netfax** was to purchase 800 access from an underlying carrier. **Intelecall and Americard** were to be wholesale distributors of the cards.

At your request, I am enclosing an enlarged copy of the back and front of a card showing "Network Services Provided By: **NFT Communications**." The Customer Service phone number was provided by **Netfax Communications, Inc.** My clients have not distributed the cards after they discovered that **Netfax** is not registered with the Florida Public Service Commission. **Netfax** has advised us that no registration is required. Your website shows that neither **Netfax Communications, Inc.** nor **NFT Communications** is registered with the PSC as either a Prepaid Credit Card Provider or Reseller.

I would request a written statement from the PCS declaring whether these cards may be legally distributed without PSC registration of **Netfax Communications, Inc.** or **NFT Communications** as a Prepaid Credit Card Provider or Reseller. Further, I would request a written certification from the PSC that neither **Netfax Communications, Inc.** nor **NFT Communications** is registered with the PSC as either a Prepaid Credit Card Provider or Reseller. If appropriate, I would appreciate you taking appropriate steps to notify **Netfax Communications, Inc.**, 31 N.E. 28th Street, Miami, Florida 33137, and my clients (care of me) of the licensing and registration requirements of Prepaid Credit Card Providers and directing that cards not be distributed without **Netfax Communications, Inc.** first obtaining proper registration (and providing me with a copy of the notification). Thank you very much for your assistance.

Very truly yours,



ROSS ROSENBERG

NFT
 Communications

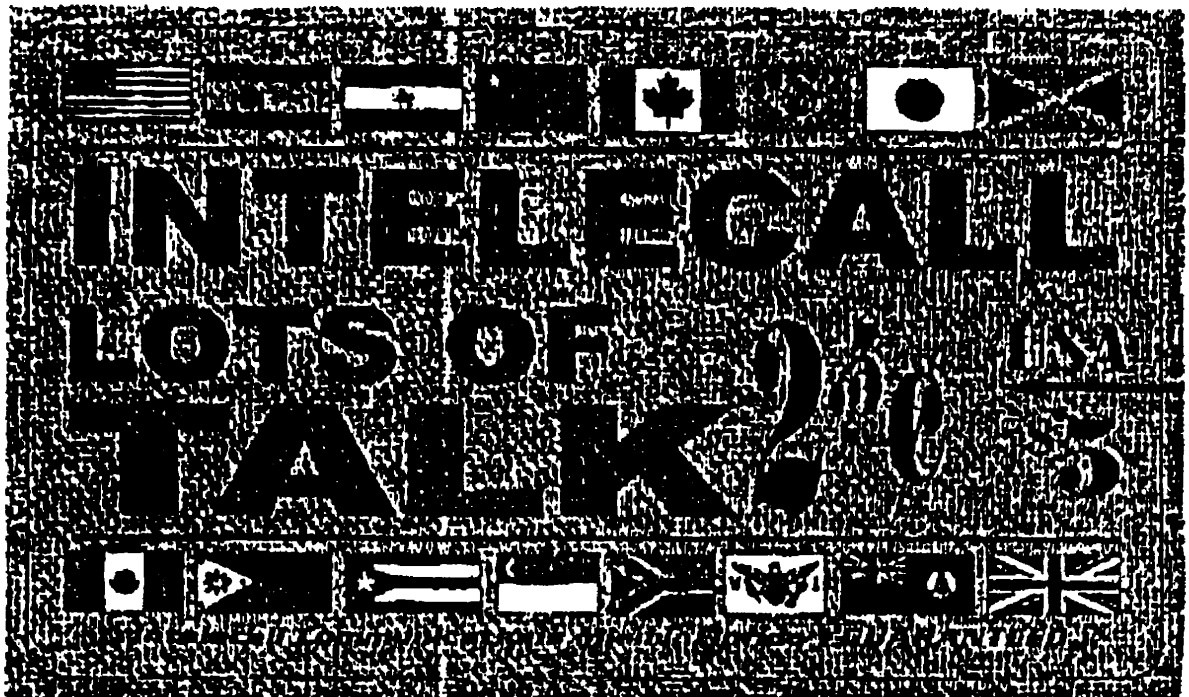
NETWORK
 SERVICE PROVIDED BY:

776 DOMESTIC MINUTES	PIN:
1: Dial: 1-800-395-2021 Listen and follow the instructions. 2: When prompted, enter the PIN number located above. 3: Domestic Calls: Dial 1 + Area Code + Telephone Number. International Calls: Dial 011 + Country Code + City Code + Local Number.	1: Marque: 1-800-396-4432 Escuche y siga las instrucciones. 2: Marque el número PIN (véase arriba) cuando se lo indique. 3: Llamadas Domésticas: Marque el 1 + Código de Área + el Número de Teléfono. Llamadas Internacionales: Marque 011 + Código del País + el Código de la Ciudad + el Número de Teléfono Local.

Customer Service/Servicio a Clientes
1-888-577-6097

Card/Tarjetas:

This card expires six months from the date of first use or activation. Esta tarjeta expira en seis meses de la fecha de su primer uso o activación. All domestic calls include a \$0.59 surcharge, and all international calls include a \$1 surcharge. Y las llamadas internacionales el cargo es un dólar \$1. Mensaje \$2.00. Por favor surcharge may apply. Todos los cargos en llamadas públicas. Todos los cargos están sujetos a cambios sin previo aviso. Los precios serán cambiados de pronto aviso. Communications For America. Advertencia: todos los cargos basados en sus tarifas reales. Cargos de comunicación aplicables. Los minutos publicados están basados en una tarificación continua. For Distributor Information Call: 1-800-737-9498



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DIVISION OF COMPETITIVE SERVICES
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

January 4, 2001

Mr. Michael R. Greenfield
Netfax Communications, Inc.
31 N.E. 28th St.
Miami, FL 33137

CERTIFIED

Dear Mr. Greenfield:

Enclosed is a copy of a prepaid debit card that shows the name "NFT Communications" as the network service provider. I have also been informed that Netfax Communications, Inc. is the network service provider for these cards and is using the name NFT Communications.

Our records do not show either company name being certificated to provide prepaid debit card service in the State of Florida. Furthermore, the name NFT Communications needs to be registered with the Division of Corporations as a fictitious name if it is desired to be used as a d/b/a on the cards.

Also enclosed is an application to provide long distance interexchange service for providing prepaid debit cards and a copy of the rules applicable to prepaid debit card service. Please review the rules, complete the application, and return the application with the \$250 application fee by January 19, 2001.

If you have questions, please contact me at 850/413-6582.

Sincerely,

A handwritten signature in cursive script that reads "Rick Moses".

Rick Moses, Chief
Bureau of Service Quality

Enclosures (3)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Mr. Michael R. Greenfield
 Netfax Communications, Inc.
 31 N.E. 28th Street
 Miami, FL 33137
 11111111111111111111111111111111

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) By Date of Delivery
[Signature] 4/5/01

C. Signature Agent
[Signature] Addressee

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article number (Copy from service label)
7000 0600 0026 4142 813

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1799

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



DIVISION OF COMPETITIVE SERVICES
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

February 5, 2001

Mr. Michael R. Greenfield
Netfax Communications, Inc.
31 N.E. 28th St.
Miami, FL 33137

CERTIFIED

Dear Mr. Greenfield:

I sent a certified letter dated January 4, 2001, that you signed for requesting that you apply for certification to provide prepaid debit card service in the State of Florida. To this date I have not received a response other than a telephone call stating that you would complete the application.

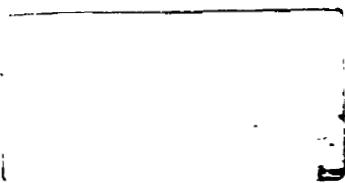
Please provide a response in writing by February 20, 2001 with your completed application or an explanation of how your offering of prepaid debit card service does not qualify as a "telecommunications company" under Section 364.02, Florida Statutes. Failure to respond may result in further legal action.

If you have questions, please contact me at 850/413-6582.

Sincerely,

A handwritten signature in cursive script that reads "Rick Moses".

Rick Moses, Chief
Bureau of Service Quality



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1
Mr. Michael R. Greenfield
Netfax Communications, Inc.
31 N.E. 28th Street
Miami, FL 33137
[Barcode]

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery
C. Signature Agent Addressee
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Copy from service label) 7000 01000 026 4142 8963
PS Form 3811, July 1999 Domestic Return Receipt 102505-99-01-1789

