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ORIGINAL

Reply to Tallahassee

January 31, 2003

Ms. Blanca S. Bayo, Director
Division of Commission Clerk &
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket 020645-TI: Compliance investigation of UKI Communications, Inc. (UKI) for apparent violation of Rules 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection

Dear Ms. Bayo:

The purpose of this letter is to propose a settlement that will satisfy the Commission's concerns in the above matter.[1] Although UKI does not agree that it willfully and knowingly violated any applicable Commission rules, it acknowledges that significant start-up problems in its first year of marketing resulted in customer confusion. UKI regrets and apologizes for the inconveniences to both consumers and staff. UKI appreciates the opportunity to resolve this matter through settlement so that formal proceeding may be avoided.

Basic Approach

UKI's settlement proposal includes three major components:

(1) Voluntary remedial measures;
(2) Quarterly reporting; and
(3) Payment of $55,000 in lieu of a fine.

[1] This letter and its contents are intended as communications in furtherance of a settlement. Nothing in this letter constitutes an admission that UKI has refused to comply with or has willfully violated any lawful rule or order of the Commission.

Each of these three components is addressed below. In addition, useful background information and explanation is provided in the attached supplement.

Voluntary Remedial Measures

As staff is aware, UKI has already implemented several voluntary remedial measures to address its start-up problems. Others are in progress. These should be recognized in the settlement. The measures include the following:

- New TPV provider with industry standard contract.
- TPV script revised to track Commission rules.
- Relocation and consolidation of offices to Florida.[2]
- Improved training program for sales staff.
- Improved program to supervise sales & marketing.
- Active and close monitoring of TPV by UKI.
- Enhance staff responsible for consumer and regulatory compliance functions.
- Written protocols for responding to staff.
- Written protocols for responding to consumer complaints.
- Review of sales compensation to avoid incentives for slamming.
- Change Website provider/platform (email bounce-back problem).
- Actively assist consumers return to IXC.
- Appropriate credits to consumers who alleged that they were switched to UKI without authorization.
- Implement warm transfer.

Quarterly Reporting

To help avoid unforeseen problems and to strengthen its working relation with Commission staff, UKI proposes to submit during 2003 quarterly reports addressing improvements, changes, and problems during the preceding three months. UKI anticipates that these reports will be routine, but nonetheless useful to staff.

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[2] UKI initially had certain marketing and customer service functions split between Alabama and Georgia offices. In reviewing UKI's operational problems, Mr. Vitale concluded that the business could be more efficiently and closely managed if operations were consolidated in one office.

Payment In Lieu Of A Fine

UKI proposes a payment in the amount of $55,0000 in lieu of a fine, payable in eleven monthly installments of $5,000. This amount is reasonable and consistent with the Commission's historic approach and takes into account mitigating factors, including:

- Complaints were result of start up problems.
- Company voluntarily suspended Florida marketing before staff filed recommendation.
- Company maintains voluntary suspension.
- Company implemented remedial measures before staff recommendation.
- $55,000 is significant (almost 9 per cent of intrastate gross operating revenues for calendar year 2001 ($593,855.52), which assures UKI a net loss in its intrastate operations for past two years).

Conclusion

UKI believes that this proposed settlement is in the public interest, and requests that staff recommend approval to the Commission. If staff has any questions about this proposal or the attached summary, please let me know.

Sincerely,

Patrick K. Wiggins

Patrick K. Wiggins

PKW:plk

Attachment

SUPPLEMENT TO SETTLEMENT OFFER

This supplement provides additional information that the Commission may find useful in evaluating UKI's settlement proposal. The information is presented in question and answer format.

What is the nature of the complaints received by the Commission?

The complaints mostly relate to confusion around the changing of the customers' preferred IXC. Although there is a tendency to loosely describe these complaints as involving "unauthorized" conversions, this is not accurate. Rather, these are generally complaints about the basis of conversion.

Some customers initially denied that UKI had any authorization to effect the conversion. Typically, a complaint appears to fall into one of three groups: (1) the complainant "did not remember" the authorization, (2) the complainant feels that UKI misrepresented or reneged on the promotional offering, or (3) someone other than the complainant made the authorization. The initial representations of the complainants notwithstanding, UKI is not aware of a single change made where the FCC TPV process was not followed. So that there is no confusion on this point:

- UKI is not aware of any customer who was switched without authorizing the conversion.
- UKI is not aware of any authorization that was not taped by the TPV provider.
- UKI is not aware of any customer who agreed to the change who did not affirm that he or she was at least 18, a member of the household, and authorized to approve the change.
- UKI is not aware of any consumer alleging that service was declined.
- UKI did not submit any carrier change order to an ILEC without first receiving confirmation from the independent TPV that the change was authorized.

What was the root cause of the customer complaints?

The root cause was customer confusion around the promotional incentive used in UKI's first two marketing campaigns. UKI attempted to win customers by offering low rates *plus* an incentive. Specifically, in one campaign prospects were provided a rate of 7 cents a minute *plus* a calling card good for 1000 free minutes. In the other campaign, the customers were offered the same low rate *plus* a rebate check of $25.00 if they stayed with UKI for 180 days. These "plus" items were, of course, incentives that were designed to stimulate sales. Unfortunately, they also stimulated complaints.

Mostly consumers complained that they did not receive their calling cards or checks soon enough. The company in fact did experience problems in getting the cards to the customers as quickly as it preferred. With respect to the checks, however, the consumer apparently did not apprehend that he or she would receive the check upon staying with the company 180 days. In any event, both groups of complaints can be related to consumer confusion or to the consumer's expectation of immediate gratification.

As Mr. Vitale explained to staff in a meeting, he realized that neither plan was working out and abandoned them. It's useful to recognize here that particularly as a new company, UKI's marketing and sales efforts need to convert prospects to new customers and new customers to loyal customers. Any plan that creates customer confusion and triggers complaints is simply not good business. This is an area where good business practice and good regulatory practice align. In short, there is no legitimate concern that the customer complaints are the result of marketing intended to make sales by creating customer confusion.

What marketing processes did UKI use to avoid complaints?

UKI's management installed a reasonable and prudent system to ensure that marketing and conversion did not result in slams or consumer complaints. Unfortunately, UKI experienced problems in each component of this system and as a result its first major marketing campaign resulted in too many complaints.

UKI's basic approach to marketing its services and responding to consumer complaints was sound. UKI employed in-house telemarketers to generate sales. They were and are employees of the company. Before being allowed to make sales calls, each marketer was given training, which included a review of rules against slamming. The telemarketers were provided scripts and were monitored by on-floor supervisors. Moreover, all outbound calls were taped on micro-cassettes, which were reviewed as needed. (Unfortunately, the tapes were recycled so the records of calls were not preserved beyond a few weeks.) Under this system, customer complaints to the company could be fully addressed and the conduct of the telemarketers reviewed. As a result, telemarketers prone to irresponsibility did not last beyond a day or two.

As contemplated by the rules, UKI contracted with an independent entity, Federal Verification Company (FVC), to provide third party verification. FVC used an automated system based on a script previously recorded by FVC which met the applicable requirements of the FCC and other states. When the telemarketer made a sale, he or she would hand off the customer to the TPV as contemplated under Florida rules. If UKI received confirmation from the TPV that the carrier change was authorized, UKI would send the order to the ILEC. Also, within 3-5 days of receiving the confirmation, UKI would send a welcome letter to the customer. The letter included an 800 number for the customer to call if there were questions.

With this system in place, UKI's management believed in good faith that it was complying with regulations and it could reasonably respond to customer complaints or staff inquiries. When a customer did call to complain, it was UKI's policy to immediately afford the customer refunds or adjustments due under applicable regulations.

Why didn't the processes UKI used prevent consumer complaints and assure better responsiveness to Commission staff?

The processes UKI used did not perform adequately. In a nutshell, UKI experienced performance problems in four basic areas.

1. First, as already addressed, its basic marketing approach created unwanted customer confusion and churn.
2. Second, the independent contractor TPV did not perform adequately.
3. Third, the company's MIS component experienced problems and the welcome letters became delayed.
4. Fourth, UKI's website platform did not perform adequately, creating communication problems.

The TPV tapes reflect that conversion checklist was not met. Why not?

As contemplated by the rules, UKI contracted with an independent entity, Federal Verification Company (FVC), to provide third party verification. FVC submitted to UKI a sample of a script that met the applicable requirements of the FCC. UKI approved the use of this script for the verification of all conversions, including those involving Florida customers. UKI did so on the mistaken but good faith belief that the script satisfied Florida requirements. UKI accepts responsibility for this mistake.

What is UKI's perspective of staff's allegations of rule violations?

Staff's inquiry into the consumer complaints does not address whether the customer *agreed* to the change of service, but whether the process used by the IXC and TPV satisfies a checklist given in the rule. If the checklist is not satisfied for any reason, the conversion is treated as a willful violation of Commission rules. To reiterate, with respect to prosecuting companies for violations of these rules, it does not matter whether the customer agreed to the change or not; the violation is for failure to follow the procedures, *not for changing a customer's preferred IXC without actual or apparent authorization.*