

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation
of UKI Communications, Inc. for
apparent violation of Rule 25-
4.118, F.A.C., Local, Local
Toll, and Toll Provider
Selection.

DOCKET NO. 020645-TI
ORDER NO. PSC-03-0990-PAA-TI
ISSUED: September 3, 2003

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER ACCEPTING SETTLEMENT OFFER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

On March 2, 2000, UKI Communications, Inc. (UKI) obtained
interexchange company (IXC) certificate number 7332. Between
November 1, 2000, and July 24, 2003, our Consumer Affairs section
logged 319 complaint cases from consumers claiming they were
slammed by UKI. As of July 28, 2003, our staff has determined that
203 of those complaints were apparent unauthorized changes of the
primary interexchange carrier by UKI, apparent violations of Rule
25-4.118, Florida Administrative Code, Local, Local Toll, or Toll
Provider Selection.

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

On January 31, 2001, UKI reported \$43,520.00 in gross intrastate operating revenues for calendar year 2000. Our records indicate that UKI paid the appropriate 2000 Regulatory Assessment Fees (RAF) on this date, but did not pay the required penalty and interest due for payment remitted after the due date of January 30, 2001. Accordingly, UKI has an outstanding balance of \$3.90 for calendar year 2000.

On March 7, 2002, UKI reported \$593,855.52 in gross intrastate operating revenues for calendar year 2001. Our records indicate that UKI paid the appropriate 2001 RAFs on this date, but did not pay the required penalty and interest due for payment remitted after the due date of January 30, 2002. Accordingly, UKI has an outstanding balance of \$106.89 for calendar year 2001.

To date, UKI has 37 consumer complaints unresolved. As of August 7, 2003, UKI has not reported its calendar year 2002 revenues or remitted the appropriate RAFs, penalties and interest.

On September 19, 2002, our staff filed its recommendation in this docket for the October 1, 2002, Agenda Conference. On September 30, 2002, UKI requested a deferral from the scheduled Agenda Conference, stating it wanted to offer a settlement.

UKI submitted an offer of settlement on July 29, 2003. In lieu of paying a fine for its apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, UKI has offered to cease operating as a telecommunications provider in Florida within 90 days after the Commission's final order approving the settlement. Further, UKI proposed the following:

1. UKI agrees that neither UKI, nor a successor corporation to UKI, will provide intrastate communications service for hire subject to the Commission's jurisdiction, or seek authority under Chapter 364, Florida Statutes, to provide such service, sooner than 3 years from the date of the final order;
2. UKI agrees that it will continue to address and resolve all pending consumer complaints;

3. UKI agrees to send a letter to each of its Florida customers notifying them that the company is exiting the market and that they must choose another local toll and/or long distance provider prior to the cessation date in order to avoid discontinuation of their service. UKI will not make any suggestions or references to its customers regarding alternate providers in the notification letter. A copy of the letter UKI proposes to send to its customers is attached to its settlement offer for review and approval by the Commission;
4. UKI agrees to pay any regulatory assessment fees, penalties, and interest owed for years 2000 through 2002, and regulatory assessment fees owed for year 2003, within 90 days of a final order approving this offer;
5. If approved, this settlement will be considered a resolution of all allegations of violations occurring as of the date of this letter; and
6. If approved, this settlement will not constitute a finding of wrongdoing.

We are vested with jurisdiction over these matters pursuant to Sections 364.285 and 364.603, Florida Statutes.

We believe that it is important to provide a brief summary of the findings in this case. Of the third party verification (TPV) tapes that UKI submitted to us in response to our staff's inquiries, none contained all of the information required by Rule 25-4.118(2)(c)2., Florida Administrative Code, Local, Local Toll, or Toll Provider Selection. Specifically, the TPV recordings were lacking at least one or more of the elements required by subsections 1., 4., or 5. of Rule 25-4.118(3)(a), Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, which state:

Subsection 1. Customer's billing name, address, and each telephone number to be changed;

Subsection 4. Statement that the customer's change request will apply only to the number on the request and there must only be one presubscribed local, one presubscribed local toll, and one presubscribed toll provider for each number;

Subsection 5. Statement that the LEC may charge a fee for each provider change.

Additionally, in all of the TPVs reviewed by our staff, we note two other apparent rule violations. First, the verifier identified the company as "United Communications." This name is not registered with the Commission or with the Florida Department of State. Rule 25-4.118(3)(a)2., Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, requires that the company clearly identify itself to the customer using its certificated name.

Second, in each TPV the verifier asked the prospective customer if he or she is authorized to "use" the service. Rule 25-4.118(3)(a)3., Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, requires that the verifier confirm that the person is authorized to request a "change" of providers. We believe that the word "use" in this context is distinctly different from the meaning of the word "change" as stated in the rule and is misleading to the prospective customers. Rule 25-4.118(10), Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, requires that during telemarketing and verification, no misleading or deceptive references shall be made while soliciting for subscribers.

While most consumers filed complaints with this Commission verbally, a few submitted written comments, and some of those expressed their belief that UKI's use of the word "use" in the question, "Are you authorized to use this service," was indeed misleading and deceptive. Still other consumers who submitted written comments with their complaints detailed different ways that they believed UKI was deceptive or misleading in its marketing or verification.

Our staff noted, during its review of the TPVs submitted by UKI, that the telemarketer remained on the phone with the customer during verification, played a pre-recorded statement requesting some portion of the information required by Rule 25-4.118(3)(a),

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Florida Administrative Code, and when necessary prompted the customer for a response or assisted the customer with his or her response. This appears to be a violation of Rule 25-4.118(2)(c), Florida Administrative Code, which requires that a firm that is independent and unaffiliated with the provider claiming the subscriber must verify the customer's requested change after telemarketing.

We have reviewed UKI's offer of settlement. Due to the nature of the marketing and verification techniques witnessed in the complaint files, we find that UKI's offer to exit the Florida telecommunications market for a period of three years from the date of issuance of the Consummating Order is in the public interest and is satisfactory. We have also reviewed UKI's proposed letter of notification to its customers and the other terms of its offer and find that they are satisfactory.

Acceptance of this settlement offer is consistent with the previous decision in Docket Number 980165-TI, Initiation of Show Cause Proceedings Against Amer-I-Net Services Corp. For Violation Of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, and Rule 25-4.043, Florida Administrative Code, Response To Commission Staff Inquiries.

Based on the foregoing, we accept the company's settlement offer to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection. UKI shall be required to remit all outstanding monies owed for Regulatory Assessment Fees, with the appropriate penalty and interest, within 90 days of the issuance of the Commission's Consummating Order. Additionally, UKI shall be required to file a report with us within 120 days of the issuance of the Consummating Order stating the manner in which UKI has complied with the provisions of its settlement offer and resolved all of the complaints filed against the company. UKI's registration No. TJ327, and its tariff shall be canceled, effective 90 days after the issuance of the Consummating Order.

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If UKI fails to pay the Regulatory Assessment Fees owed, with penalty and interest, within 90 days of the issuance of the Consummating Order, or fails to file a report with the Commission within 120 days of the issuance of the Consummating Order to demonstrate that it has complied with its settlement offer and that it has resolved all of the complaints filed against the company, this docket should remain open pending further proceedings.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement offered by UKI Communications, Inc., attached and incorporated into this Order as Attachment A, is accepted. It is further

ORDERED that UKI shall be required to remit all outstanding monies owed for Regulatory Assessment Fees, with the appropriate penalties and interest, within 90 days of the issuance of the Commission's Consummating Order. It is further

ORDERED that UKI shall be required to file a report with this Commission within 120 days of the issuance of the Consummating Order stating the manner in which UKI has complied with the provisions of its settlement offer and resolved all of the complaints filed against the company. It is further

ORDERED that UKI Communications, Inc. shall surrender its certificate, Certificate Number 7332, and the certificate shall be canceled within 60 days of the issuance of this Order. It is further

ORDERED that UKI's registration with the Commission, No. TJ327, and its tariff shall be canceled, effective 90 days after the issuance of the Consummating Order. It is further

ORDERED that this Docket shall be closed upon the remittance of outstanding monies for Regulatory Assessment Fees, penalties and interest, the filing of the report stating the manner in which UKI has complied with the provisions of its settlement offer, resolution of all outstanding complaints, and the surrender of Certificate Number 7332.

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By ORDER of the Florida Public Service Commission this 3rd Day
of September, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

LHD

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding,

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in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 24, 2003.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

ORIGINAL

WIGGINS & VILLACORTA, P.A.

Post Office Drawer 1657
Tallahassee Florida 32302
850-222-1358
850-222-1359 FAX

July 29, 2003

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

COMMISSION
CLERK

JUL 29 PM 3:49

RECEIVED

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:

UKI Communications, Inc. (UKI) would like to resolve the Commission's concerns in the above matter without further process and on a mutually agreeable basis. This letter is an offer of settlement and supersedes all early offers and proposals. As an offer of settlement, nothing in this letter may construed as an admission against interest nor used against UKI should this matter not settle. 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.

Staff Recommendation

On September 19, 2002, staff filed its recommendation that the Commission initiate an enforcement proceeding against UKI for 162 apparent violations of Rule 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection. Staff recommended that the Commission impose a penalty on UKI Communications, Inc. of \$10,000 per apparent violation, for a total of \$1,620,000.

UKI is a recently established and relatively small IXC. It obtained Commission inter-exchange company (IXC) Certificate Number 7332 on March 2, 2000. UKI reported \$593,855.52 in gross intrastate operating revenues for calendar year 2001.

Significant Disagreement Between UKI and Staff

Although UKI believes that it and staff are in accord on how to settle this matter,

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COMMISSION CLERK

there nonetheless remains between UKI and staff a significant disagreement with respect to a material issue of law and policy. Although this issue does not have to be resolved to settle this matter, UKI believes it useful to be clear about its view of the case.¹

Specifically, staff characterizes the consumer complaints as slamming complaints - i.e., complaints about unauthorized transfer - because as a general matter the script used by UKI's TPV provider did not comply or could not be shown to comply with the checklist provided in Rule 25-4.118, F.A.C. UKI disagrees. UKI's initial marketing campaigns generated confusion and customer complaints, which UKI regrets. Nevertheless, to the best of UKI's knowledge, no consumer was switched without complying with FCC rules for verifying customer authorization of the switch (i.e., the authorization for each and every conversion was verified by an independent TPV, which authorization was recorded, and no conversion order was issued without verification from the TPV provider that that the conversion was authorized). In short, UKI cannot acquiesce in the charges that it switched any consumer's service without actual or apparent authority from the consumer to do so.

Nature of Consumer Complaints

According to staff, from January 1, 2001, to June 24, 2002 - The Commission's Division of Consumer Affairs (CAF) received 230 consumer complaints against UKI. The number of complaints per month peaked at 33 in November 2001.

Staff determined that 162 of the 230 consumer complaints related to apparent unauthorized carrier change in violation of Rule 25-4.118, Florida Administrative Code. This determination of "apparent violations" is based upon (a) how the CAF analyst logged in consumer complaint and (b) staff's review of TPV tapes. Based on the review of the tapes, staff concluded that there were:

1. 111 apparent violations of the rule because the independent third party verifier (a) identified UKI as "United Communications" or (b) asked if customer was authorized to "use" the service (as opposed to change" the service), or (c) both;
2. 47 apparent violations because UKI was not able to provide TPV tapes; and
3. 4 apparent violations because the TPV tapes were unintelligible.

The complaints mostly relate to confusion around the changing of the customers'

¹ UKI would like to emphasize that this is not a complaint about staff, but rather statement of disagreement over a legal issue. Staff has been courteous, professional and even-handed in dealing with UKI, which UKI greatly appreciates.

preferred IXC. Although there is a tendency to loosely describe these complaints as involving "unauthorized" conversions, this is not accurate. Rather, these were generally complaints about the basis of conversion.

Some customers initially denied that UKI had any authorization to effect the conversion, but this is not unusual in the industry. A review of commission records reflect that typically, a complaint falls into one of three groups: (1) the complainant "did not remember" the authorization, (2) the complainant felt that UKI misrepresented or reneged on the promotional offering, or (3) someone other than the complainant made the authorization.

To reiterate, the initial representations of the consumers 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 he or she declined service.
- UKI did not submit any carrier change order to an ILEC without first receiving confirmation from the independent TPV that the change was authorized.

The Inadequacy of the TPV Script

Staff is correct that the script used by the independent TPV provider did not meet the conversion checklist in Rules 25-4.118, F.A.C. Specifically, the script did not contain the required items stating that (i) the LEC may charge a fee for each S. provider change and (ii) the change authorization applies to only one number (e.g., if a consumer has two telephone numbers, there must be two separate authorizations).

As contemplated by the Commission 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.

The Source of the Complaints

The source of the complaints was customer confusion around the promotional incentives 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 reward.

As UKI explained to staff in a meeting, it realized that neither plan was working out and abandoned both. It's useful to recognize here that particularly as a new company, UKI's marketing and sales efforts needed 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. There is no legitimate concern that the customer complaints are the result of marketing intended to make sales by creating customer confusion.

UKI's System Was Reasonable

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.

When the telemarketer made a sale, he or she would hand off the customer to the TPV as contemplated under Florida rules. If UKI receive confirmation from the TPV that 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.

What Went Wrong?

So what went wrong? UKI experienced performance problems in three key components of its system.

1. First, the independent contractor TPV did not perform adequately.
2. Second, the company's MIS component experienced problems and the welcome letters became delayed.
3. Third, UKI's website platform did not perform adequately, creating communication problems.

How Did UKI Respond?

UKI initiated and implemented significant remedial measures before this docket was opened. Perhaps the most dramatic was the suspension of intrastate marketing in June of 2002, some three months before staff's recommendation was filed. This suspension has remained in effect for over a year, the consequences of which dictate cancellation of UKI's certificate in the face of this investigation.

UKI took other steps to address the root causes of its problems. These included contracting with a new TPV provider, improving the training program for sales staff, retaining permanently sales tapes, and changing of Website provider and platform (email bounce-back problem).

Offer of Settlement

Although UKI does not agree that it willfully and knowingly violated applicable Commission rules, it acknowledges that significant start-up problems in its first year of marketing resulted in customer confusion and complaints. UKI regrets and apologizes for the inconveniences to both consumers and staff. UKI appreciates the opportunity to resolve this matter through settlement so that the burden of formal proceeding may be avoided.

As previously noted, 12 months ago, UKI's management decided to suspended intrastate marketing and not resume until (1) the matters in this docket were

resolved, and (2) it was satisfied that the systems it used to market, handle consumers complaints, and respond to regulatory requests were "bulletproof." As events have unfolded, UKI has reluctantly concluded that the only practical avenue to resolving this matter is through cancellation of its certificate and to terminate intrastate communications service subject to the Commission's jurisdiction.

In light of the above, UKI proposes the following settlement:

1. UKI will stop operating as a telecommunications provider within 90 days of a final order approving this offer;
2. UKI agrees that neither UKI nor a successor corporation to UKI will provide intrastate communications service for hire subject to the Commission's jurisdiction, or seek authority under Chapter 364, Florida Statutes, to provide such service, sooner than 3 years from the date of the final order;
3. UKI agrees that it will continue to address and resolve all pending consumer complaints;
4. UKI agrees to send a letter to each of its customers in the State of Florida notifying them that the customer is exiting the market and that they must choose another local toll and/or long distance provider prior to the cessation date in order to avoid discontinuation of their service. UKI will not make any suggestions or references to its customers regarding alternate providers in the notification letter. A copy of the letter UKI proposes to send to its customers is attached here to for review and approval by the Commission;
5. UKI agrees to pay any regulatory assessment fees, penalty, and interest owed for years 2000 through 2002, and regulatory assessment fees owed for year 2003, within 90 days of a final order approving this offer;
6. The Commission agrees that this settlement, if approved, will be considered a resolution of all allegations of violations occurring as of the date of this letter; and
7. The Commission agrees that this settlement, if approved, will not constitute a finding of wrongdoing.

Thank you for your attention to this matter.

Sincerely



Patrick K. Wiggins
Attorney for UKI Communications, Inc.

attachment

JULY 29, 2003
UKI SETTLEMENT OFFER

APPENDIX

[INSERT UKI LETTERHEAD WITH ADDRESS]

Dear Customer:

We regret to inform you that UKI Communications, Inc. will be discontinuing intrastate toll service for all of our commercial and residential customers located in the State of Florida. All of our retail customers for in-state long distance interexchange services, including 1+, toll-free, dial around, casual, and travel card services will be affected.

To ensure continuity of service, you should call the substitute long distance carrier of your choice as soon as possible to arrange for alternative service. UKI will suspend service as soon as permitted by the Florida Public Service Commission and applicable regulations, and our target date for complete discontinuance of service is _____.

Please accept our thanks for your business, and our apologies for the inconvenience of having to select another carrier. If we can provide any further assistance, please call our Customer Service Department at _____.