

State of Florida



# Public Service Commission

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COMMISSION  
CLERK

**DATE:** March 18, 2004

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (L. Fordham) *LF*  
Division of Competitive Markets and Enforcement (R. Kennedy) *RK*  
Division of Consumer Affairs (Durbin) *DD*

**RE:** Docket No. 971482-TI – Initiation of show cause proceedings against Minimum Rate Pricing, Inc. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

Docket No. 980335-TI – Initiation of show cause proceedings against Minimum Rate Pricing, Inc. for violation of Rules 25-4.118, F.A.C., Interexchange Carrier Selection, and 25-4.043, F.A.C., Response to Commission Staff Inquiries.

**AGENDA:** 03/30/04 – Regular Agenda – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\971482.RCM.DOC

### Case Background

Minimum Rate Pricing, Inc. (MRP), was issued Certificate Number 4417 on May 7, 1996, as a provider of interexchange telecommunications service in Florida.

On February 23, 1998, this Commission issued Order No. PSC-98-0313-FOF-TI, in Docket No. 971482-TI, requiring MRP to show cause why it should not have certificate number 4417 canceled or be fined \$500,000 for 50 apparent unauthorized carrier change (slamming) violations that were closed by the Division of Consumer Affairs between June 13, 1996, through January 20, 1998.

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FPSC-COMMISSION CLERK

Docket No.: 971482-TI and 980335-TI

Date: March 18, 2004

On February 9, 1998, the Commission issued Order No. PSC-98-0259-PCO-TI, acknowledging the Office of Public Counsel's January 23, 1998, Notice of Intervention. In addition, Order No. PSC-98-0388-PCO-TI was issued on March 12, 1998, granting the Attorney General's January 26, 1998, request to intervene.

On March 5, 1998, a second docket was opened to initiate show cause proceedings for the continuous inflow of consumer complaints regarding alleged unauthorized carrier changes. Between January 20, 1998, and September 10, 1998, an additional 423 complaints were received regarding unauthorized carrier changes by MRP. Our staff determined that 144 of those complaints were apparent unauthorized carrier changes.

After numerous meetings between staff and MRP regarding the pending show cause proceedings, on December 17, 1998, MRP filed an offer of settlement which proposed to settle all allegations contained in both of the referenced Dockets. In that settlement proposal, MRP agreed to totally modify its operations to conform to the expectations of this Commission. In addition, MRP agreed to make a total voluntary contribution of \$100,000, in 12 equal monthly installments, to the General Revenue Fund of the State of Florida with no admission of liability or wrongdoing. That proposal was approved on February 10, 1999, by Order No. PSC-99-0261-AS-TI.

On February 26, 1999, MRP filed for protection under Chapter 11 of the United States Bankruptcy Code, and on July 19, 1999, staff filed a claim with the United States Bankruptcy Court, District of New Jersey, for the amounts owed this Commission. No payments were ever received from MRP pursuant to the approved settlement agreement. At this time there is a draft of the Bankruptcy Court's final order being circulated. That draft order does not contain provisions for any payment to this Commission for monies owed by MRP.

As of this date, the company has been totally liquidated and is not providing services of any type. Staff notes regulatory assessment fee (RAF) penalties and interest were not paid for 1997 and 1998, and that MRP has paid nothing at all for the years 1999 - 2003. In addition, there is no longer a company management structure with which staff can interact for purposes of resolving issues.

**Discussion of Issues**

**Issue 1:** Should the intrastate interexchange company (IXC) registration of MRP be canceled?

**Recommendation:** Yes. (R. KENNEDY, L. FORDHAM, DURBIN)

**Staff Analysis:** MRP has been totally liquidated in bankruptcy proceedings. The company is not providing services of any type in Florida and has not paid RAFs for the last five years. The Bankruptcy Court docket remains open only because of some lingering disputes among the secured creditors over the remaining assets of the company. Accordingly, MRP's IXC registration should be canceled.

**Issue 2:** Should the monies owed this Commission by MRP be submitted to the Department of Financial Services for collection?

**Recommendation:** No. (R. KENNEDY, L. FORDHAM, DURBIN)

**Staff Analysis:** MRP has been totally liquidated in bankruptcy proceedings. In any bankruptcy liquidation or reorganization secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. Regulatory fees, interest, and penalties owed by a company to the Florida Public Service Commission are not secured debts and, as a practical matter, are uncollectible in a bankruptcy proceeding where liquidation occurs. Accordingly, submitting the monies owed to this Commission by MRP for collection would be a meaningless gesture and would only require the continued expenditure of the State's valuable resources with no hope of any recovery. Therefore, it is recommended that permission be sought from the Department of Financial Services to write off all monies owed by MRP in these dockets.

**Issue 3:** Should these dockets be closed?

**Recommendation:** Yes. (L. FORDHAM)

**Staff Analysis:** MRP has been totally liquidated in bankruptcy proceedings and is no longer providing telecommunications services. Additionally, there is no possibility of collecting any of the monies owed this Commission by MRP. Accordingly, these dockets should be closed.