

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-

DATE: May 21, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Curry) *KLC*
Office of the General Counsel (McKay, Brooks) *MJB Vsm [Signature]*

RE: Docket No. 080109-TI – Compliance investigation of MP Alliance Technologies, Inc. for apparent violation of Rule 25-24.470, F.A.C.

AGENDA: 06/03/08 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\080109.RCM.DOC

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 MAY 21 11:56 AM
 COMMISSION CLERK

Case Background

On August 8, 2007, a customer filed two complaints with the Commission regarding three prepaid calling cards. After receiving the complaints, staff determined that the network service provider of the calling cards was MP Alliance Technologies (MPAT). The network service provider is the party responsible for ensuring that the prepaid calling services are provided in accordance with Commission rules governing those type services. Staff also determined that MPAT had not registered with the Commission as an intrastate interexchange telecommunications company (IXC) and had not filed a tariff. Staff made several attempts to locate the company, but was unable to obtain contact information for MPAT at that time.

DOCUMENT NUMBER-DATE

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On December 7, 2007, after obtaining the company's contact information, staff sent a certified letter to MPAT. The letter informed MPAT of the customer's complaints and of the company's requirement to register as an IXC and file a tariff with the Commission. On January 2, 2008, an attorney representing MPAT contacted staff, via telephone. He informed staff that he was the official point of contact for MPAT and that all future correspondence with the company should go to him. The attorney claimed that MPAT only provided interstate and international services and that the cards could not be used to place intrastate calls. Staff requested that the company submit these statements in writing.

On January 3, 2008, staff received a letter, via facsimile, from MPAT. The company agreed to resolve the customer's complaints by issuing the customer a refund of \$6.00 plus an additional \$6.00 for the customer's inconvenience. MPAT wrote that it did not provide intrastate IXC services, and therefore would not register or file a tariff with the Commission.

On January 9, 2008, staff contacted the customer to verify she had received a refund. She had neither been contacted by the company nor had she received a refund. The customer also advised that her address had changed and provided staff with the new address. Staff contacted MPAT to provide the customer's new address. Staff requested that the company provide a copy of the letter and check that it planned to send to the customer. Staff also requested that the company provide staff with an active MPAT calling card for testing and verification.

On January 14, 2008, staff received the requested information along with a \$2.00 calling card titled "*The Latino*." After receiving the requested information from the company, staff contacted the customer. The customer verified that she did receive a refund in the amount of \$12.

On January 29, 2008, staff attempted to test the calling card, but was unable to complete a call. On January 30, 2008, staff made a second attempt to test the card. Staff was able to successfully complete five intrastate long distance calls. After the test calls were completed, staff contacted MPAT and requested that MPAT provide the call-detail records for the card. The company asked that staff provide a copy of the request in writing. Upon termination of the phone call, staff immediately faxed a request for the call-detail records to the company.

On January 31, 2008, MPAT's attorney informed staff that the company was unable to provide call-detail records for the calling card. According to the attorney, the calling card that was provided to staff was a new card and had never been used. Staff explained again that the calling card was used during testing; therefore, a call-detail record of the calls should exist. The attorney stated that he would contact MPAT again to request the information.

On February 1, 2008, MPAT contacted staff. According to MPAT, the phone card that was sent to staff was provided in error. MPAT claimed that it does not use the "*The Latino*" brand phone cards. The company representative informed staff that it inherited those phone cards when MPAT was purchased. As a result, MPAT was unable to provide call records for the calling card. The company offered staff another phone card for testing. MPAT stated that it would provide a phone card that was the same brand as the phone card in the customer's complaint. The company faxed a letter to staff on February 4, 2008, reiterating what was

discussed during the telephone conversation, and on February 6, 2008, staff received the "*Morenita*" phone card.

On February 13, 2008, staff tested the "*Morenita*" phone card. Staff made and completed two intrastate long distance calls. During each test call, staff contacted a member of the Commission's staff in Tallahassee. The calls were made using the West Palm Beach and Tampa access telephone numbers listed on the calling card. The same staff member was called during both test calls.

Despite MPAT's claims that the company was not providing intrastate IXC services in Florida, staff was able to make intrastate long distance calls using both of the cards provided by the company. After determining that MPAT was indeed providing intrastate IXC services in Florida, staff opened this docket on February 22, 2008.

On March 6, 2008, staff attempted to test the "*Morenita*" calling card a third time. Staff called three different local access numbers listed on the card. After dialing each number, staff received a recording asking the customer to press "1" for English or "2" for Spanish. Upon pressing a number, either 1 or 2, the call would disconnect. When staff attempted to place a call using the 800 access number, the recording stated that the call cannot be completed as dialed. Staff also called the access numbers listed on "*The Latino*" calling card that the company originally provided for testing and experienced similar results.

On March 27, 2008, staff filed a recommendation. The recommendation addressed MPAT's failure, as required by Rule 25-24.470, Florida Administrative Code (F.A.C.), to register as an IXC and file a tariff prior to providing intrastate interexchange telecommunications services in Florida. On April 1, 2008, MPAT contacted staff, via telephone, and requested that the item be deferred from the April 8, 2008, Agenda Conference.

The company submitted a written request for deferral, via facsimile, on April 2, 2008. MPAT also proposed a settlement offer of \$5,000 to resolve the company's apparent violation of Rule 25-24.470, F.A.C., and agreed to register and file a tariff with the Commission. Two weeks later, after not receiving an IXC Registration form or tariff from the company, staff contacted MPAT. At that time, staff requested that the company submit in writing a date by which the company planned to register and file a tariff. The company agreed to submit the letter on April 17, 2008, the next day. However, MPAT never submitted the requested information.

On April 29, 2008, staff sent a letter to the company, via certified mail and facsimile. The letter notified MPAT that if the company did not register and file a tariff by May 9, 2008, staff would re-file the recommendation that was deferred from the April 8, 2008, Agenda Conference. On May 4, 2008, MPAT submitted a letter, via facsimile, stating that the company had decided not to proceed with its plans to conduct business in Florida. The company will not register with the Florida Department of State to conduct business in Florida and will not register or file a tariff with the Commission as stated in the company's proposed settlement offer. However, the company did agree to submit the proposed settlement payment of \$5,000 for its apparent violation of Rule 25-24.470, F.A.C.

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This recommendation addresses MPAT's proposed settlement offer to cease providing prepaid calling services in Florida and to submit a payment in the amount of \$5,000 to resolve the company's apparent violation of Rule 25-24.470, F.A.C. The Commission is vested with jurisdiction over these matters pursuant to Sections 364.02, 364.04, and 364.285, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission accept MP Alliance Technologies, Inc.'s proposed settlement offer to cease providing prepaid calling services in Florida and to submit a payment in the amount of \$5,000 to resolve the company's apparent violation of Rule 25-24.470, F.A.C.?

Recommendation: Yes, the Commission should accept MP Alliance Technologies, Inc.'s proposed settlement offer to cease providing prepaid calling services in Florida and to submit a payment in the amount of \$5,000 to resolve the company's apparent violation of Rule 25-24.470, F.A.C. **(Curry, McKay)**

Staff Analysis: As stated in the case background, after receiving a customer complaint, staff determined that MPAT was providing prepaid calling services in Florida and had not registered as an IXC or filed a tariff with the Commission. Staff contacted the company and informed MPAT of the company's apparent violations. The company initially agreed to register and file a tariff with the Commission and to continue operating in Florida. However, MPAT ultimately decided not to proceed with their initial plans.

To resolve the company's apparent violation of Rule 25-24.470, F.A.C., MPAT has proposed to cease providing prepaid calling services in Florida and to submit a settlement payment in the amount of \$5,000. MPAT is aware that in the future if the company elects to provide intrastate interexchange telecommunications services in Florida and fails to register and file a tariff with the Commission, it will be subject to penalties pursuant to Section 364.285, Florida Statutes.

MPAT's proposed settlement offer is consistent with settlement offers that the Commission has approved in similar dockets. In Docket No. 030995-TI, In Re: Compliance investigation of Cybertel, Communications Corp. for apparent violations of Sections 364.02(13), 364.04, and 364.336, Florida Statutes, the Commission accepted the company's proposed settlement offer to cease operating in Florida and to submit a settlement payment in the amount of \$5,000 to resolve the company's apparent violations. Because MPAT's offer is consistent, staff believes that the Commission should accept MPAT's proposed settlement offer to cease providing prepaid calling services in Florida and to submit a payment in the amount of \$5,000 to resolve the company's apparent violation of Rule 25-24.470, F.A.C.

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Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1, this docket should remain open pending the receipt of the \$5,000 settlement payment. The payment should be received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. The payment should be made payable to the Florida Public Service Commission and should identify the docket number and the company's name. Upon receipt of payment, the Commission shall forward it to the Division of Financial Services to be deposited into the General Revenue Fund. If MPAT fails to pay the payment within fourteen (14) calendar days after the issuance of the Consummating Order, this docket should remain open pending further proceedings. This docket should be closed administratively upon receipt of the settlement payment. **(McKay, Brooks)**

Staff Analysis: Staff recommends that the Commission take action as set forth in the above staff recommendation.