

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against News Telecom, Inc. for violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 970583-TI  
ORDER NO. PSC-97-0911-FOF-TI  
ISSUED: August 1, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
DIANE K. KIESLING  
JOE GARCIA

ORDER TO SHOW CAUSE AND NOTICE OF PROPOSED  
AGENCY ACTION ORDER REQUIRING ALL IXCs TO CEASE  
PROVIDING SERVICE TO NEWS TELECOM, INC.

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that part of 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.

Show Cause

Recently, we became aware that News Telecom, Inc. (News Telecom) apparently provided debit card services without having obtained a certificate of public convenience and necessity from this Commission. On March 7, 1997, our staff sent a certified letter to News Telecom requesting information to help determine if certification was, in fact, necessary. News Telecom signed for the certified letter, but did not respond to the inquiry. Our staff sent a second certified letter on March 24, 1997, for which

DOCUMENT NUMBER-DATE

07793 AUG-16

FPSC-RECORDS/REPORTING

News Telecom also signed. As of July 15, 1997, the date of our Agenda Conference at which we considered this matter, we had not received a response.

Rule 25-24.470, Florida Administrative Code, states:

No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted. However, acquisition of equipment and facilities, advertising and other promotional activities may begin prior to the effective date of the certificate at the applicant's risk that it may not be granted. In any customer contacts or advertisements prior to certification, the applicant must advise the customer that certification has not and may never be granted.

In addition to our concerns regarding News Telecom's apparent need for certification, on March 13, 1997, we received a complaint from Mr. Selvin Ferrell. The consumer stated that he had purchased a debit card from News Telecom, but had been unable to use the card because the 800 access number was constantly busy. Staff sent two letters to News Telecom regarding Mr. Ferrell's complaint. News Telecom signed for both letters, but, as of our July 15, 1997, Agenda Conference, had not responded. On April 8, 1997, the Commission's Division of Consumer Affairs received another complaint regarding a prepaid debit card upon which News Telecom is identified as the service provider. The consumer also stated that the 800 access number was constantly busy. Our staff sent a letter regarding this complaint to News Telecom, but News Telecom has not responded to this subsequent letter.

Based on the evidence available, it appears that News Telecom has violated Rule 25-24.470, Florida Administrative Code, by offering telecommunications service without a certificate. In addition, the 800 access number is constantly busy, and the customer service number has been disconnected. Customers, therefore, are unable to use debit cards they have purchased.

Furthermore, pursuant to Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, ". . . 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." News Telecom has not responded to any Commission staff inquiries regarding certification or the complaints.

Due to the fact that News Telecom is unresponsive to our staff's inquiries, and since it appears that News Telecom is providing telecommunications service without a certificate, we shall order News Telecom to show cause why it should not be fined for apparent violations of Rules 25-24.470, and 25-4.043, Florida Administrative Code. Upon consideration, we find that a fine of \$25,000 for operating without a certificate, and a fine of \$10,000 for failure to respond to staff inquiries are appropriate. Thus, if News Telecom fails to respond to this show cause within 20 days of the issuance of this Order, the fine shall be assessed.

Proposed Agency Action:

All Interexchange Carriers (IXCs) to Cease Providing Service

Rule 25-24.4701 (3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited, states:

The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

In view of the fact that News Telecom is apparently providing service in Florida without a certificate, we hereby order all certificated IXCs to discontinue providing intrastate long distance service for resale to this company at the conclusion of the show cause proceeding, in accordance with Rule 25-24.4701, Florida Administrative Code. Any IXC providing service to the company must contact the Commission at the conclusion of the show cause response

ORDER NO. PSC-97-0911-FOF-TI  
DOCKET NO. 970583-TI  
PAGE 4

period indicated herein in order to determine if the show cause proceeding has been concluded.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that News Telecom, Inc. shall show cause in writing within 20 days of the issuance of this Order why it should not be fined for Rule violations as described in the body of this Order. It is further

ORDERED that News Telecom, Inc.'s response shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to the Order to Show Cause portion of this Order in the manner and by the date set forth in the Notice of Further Proceedings or Judicial Review section of this Order shall constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and will result in the automatic assessment of the fine indicated in the body of this Order. It is further

ORDERED that if the fine is assessed, News Telecom, Inc. shall remit \$35,000 to this Commission for remittance to the Office of the Comptroller for deposit in the State General Revenue Fund, in accordance with Section 364.285(1), Florida Statutes. It is further

ORDERED that all certificated interexchange carriers shall cease providing interexchange service to News Telecom, Inc., upon the conclusion of the show cause process set forth in this Order. It is further

ORDERED that any certificated interexchange carrier providing service to News Telecom, Inc. shall contact the Commission at the end of the show cause response period set forth herein in order to determine if the show cause process has been concluded.

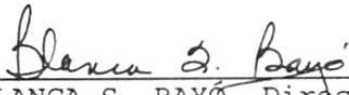
ORDERED that the portion of this Order that requires all certificated interexchange companies to cease providing service to News Telecom, Inc. is issued as proposed agency action and shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDER NO. PSC-97-0911-FOF-TI  
DOCKET NO. 970583-TI  
PAGE 5

ORDERED that this docket shall remain open pending resolution of the show cause process or any protest to the Proposed Agency Action portion of this Order. It is further

ORDERED that in the event the Proposed Agency Action portion of this Order become final, and News Telecom fails to respond to our Order to Show Cause as prescribed herein, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 1st day of August, 1997.

  
\_\_\_\_\_  
BLANCA S. BAYO, Director  
Division of Records and Reporting

( S E A L )

BC

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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 show cause portion of this Order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 21, 1997.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

The portion of the action proposed herein which is preliminary in nature will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this

ORDER NO. PSC-97-0911-FOF-TI  
DOCKET NO. 970583-TI  
PAGE 7

portion of the Order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 22, 1997.

In the absence of such a petition, the proposed agency action portion of the order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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

If the proposed agency action portions of this order become final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.