

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Phone Calls, Inc. for violation of Rules 25-4.043, F.A.C., Response to Commission Staff Inquiries, 25-4.118, F.A.C., Interexchange Carrier Selection, and 25-24.472, F.A.C., Improper Use of a Certificate.

DOCKET NO. 961479-TI
ORDER NO. PSC-97-0969-FOF-TI
ISSUED: August 12, 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

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING FINE AND REQUIRING ALL IXCs
TO CEASE PROVIDING SERVICE TO PHONE CALLS, INC.

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.

By Order No. PSC-96-0637-FOF-TI, issued May 10, 1996, in Docket No. 960273-TI, we approved the assignment of Certificate No. 3543 from Long Distance Services, Inc., to Phone Calls, Inc., (Phone Calls) a switchless reseller, effective June 1, 1996. Long Distance Services originally obtained its certificate on April 19, 1994.

By Order No. PSC-97-0124-FOF-TI, issued February 4, 1997, we ordered Phone Calls, Inc., to show cause why it should not be fined up to \$25,000 per day or have its certificate canceled for not

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responding to staff inquiries, switching consumers' long distance carrier without authorization, and misusing its certificate.

On March 14, 1997, in Docket No. 970151-TI, we issued Order No. PSC-97-0287-FOF-TI. By that Order, we canceled Phone Calls' certificate for not notifying us of its address change within 10 days of the change.

In May 1997, our staff was contacted by Mr. John Fudesco, President of Atlas Communications, Ltd. (Atlas). Mr. Fudesco advised staff that Atlas had been Phone Calls' underlying carrier and that Atlas was still serving approximately 3,000 Florida consumers under Phone Calls' name.

As of the date of our August 5, 1997, Agenda Conference, Phone Calls, Inc., had not responded to our Order to Show Cause, Order No. PSC-97-0124-FOF-TI. Thus, we take the action outlined below.

FINE IMPOSED

Although we have already canceled Phone Calls, Inc.'s certificate, Phone Calls' rule violations are particularly egregious. Phone Calls, Inc., has the dubious honor of having the highest number of slamming complaints logged against it in an 11-month period. In addition, our records show that as of March 31, 1997, we were still receiving slamming complaints against the company. Thus, we find that a fine is appropriate. Section 364.285, Florida Statutes, provides that we may fine a regulated company up to \$25,000 per day per violation. Therefore, we hereby fine Phone Calls, Inc., \$2,000 per complaint, or \$860,000. We note that Phone Calls is currently being investigated by the Federal Communications Commission in CC Docket No. 97-144, and that from all reports, Phone Calls, Inc., is defunct. Nevertheless, should Phone Calls, Inc., ever apply for another certificate of public convenience from this Commission, the company shall be required to pay the fine before its application will even be considered.

ALL CARRIERS ORDERED TO CEASE PROVIDING SERVICE

On May 30, 1997, Mr. John Fudesco, of Atlas Communications, Ltd., (Atlas) contacted our staff regarding this investigation of Phone Calls. Mr. Fudesco stated that Atlas was Phone Calls, Inc.'s, underlying carrier, and that although Phone Calls was no longer operating, Atlas was still providing service in Phone Calls'

name to customers. Mr. Fudesco indicated that Atlas has been involved in numerous proceedings against Phone Calls in other states, as well as in proceedings before the Federal Communications Commission. In further conversations with Mr. Fudesco and other Atlas representatives, Atlas expressed concerns that if we were to order all interexchange carriers to cease providing service to Phone Calls, Florida customers being served under that name would suddenly be without long distance service. Atlas asserted that there are approximately 3,000 customers currently being served by Atlas under Phone Calls's name. Atlas also expressed some concern that any complaints logged at the Commission by Phone Calls customers might, ultimately, reflect badly upon Atlas as the underlying carrier.

Atlas later indicated that it would like to send the affected customers a notice explaining what had happened to Phone Calls, Inc., and notifying the customers that they must now contact their local exchange company (LEC) to select another primary interexchange carrier. Atlas surmised that such notice would give Phone Calls' customers an opportunity to select a long distance carrier before service is blocked to Phone Calls. Atlas noted, however, that it bills through a billing agent, USBI, and does not have access to address information for Phone Calls' customers. Thus, Atlas asserted that it would not be able to get such a notice to Phone Calls customers without assistance from USBI and the LECs.

While we understand Atlas's concerns that customers may be confused as to why their long distance service has been blocked, it is more important that we rectify the current situation in which Phone Calls customers still believe that they are being served by an active, operating company. The affected customers will still be able to use access codes to obtain long distance service until they select a new carrier.

If Atlas wants to send notice to Phone Calls customers, it is Atlas's responsibility to work out an agreement with USBI and the LECs so that the notice is delivered and any costs that may be incurred are paid. Nevertheless, we encourage the LECs and USBI to work with Atlas to come to some arrangement whereby Phone Calls' customers are informed that Phone Calls is no longer providing service and that the customers should contact their LEC to select another interexchange carrier. In addition, we emphasize that any notice issued to Phone Calls' customers must be competitively neutral.

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Upon consideration, we, hereby, order all certificated IXCs to discontinue providing long distance service to this company. In light of Atlas's desire to notify customers of this matter and the need for Atlas to negotiate with other entities in order to accomplish such notice, the effective date of this portion of our Order shall be 30 days from the date the proposed agency action becomes final. Fifty-one days is sufficient time to arrange for notification of Phone Calls' customers. Whether or not Atlas is able to arrange for such notification of Phone Calls' customers, all IXCs shall cease providing service to Phone Calls, Inc., 30 days from the date this Order becomes final.

It is, therefore

ORDERED by the Florida Public Service Commission that Phone Calls, Inc., shall pay \$860,000 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 Phone Calls, Inc., 30 days from the date this proposed agency action order becomes final. It is further

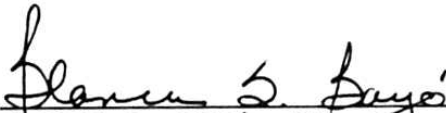
ORDERED that any certificated interexchange carrier providing service to Phone Calls, Inc., shall contact the Commission at the end of the protest period set forth herein in order to determine if the Order has become final. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, 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

ORDERED that in the event this Order becomes final, this Docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 12th
day of August, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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 action proposed herein is preliminary in nature and 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 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 September 2, 1997.

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In the absence of such a petition, this 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 this order becomes 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.