

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against New Way Communications 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. 970845-TI
ORDER NO. PSC-97-1145-PCO-TI
ISSUED: September 30, 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 NEW WAY COMMUNICATIONS

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 obtained evidence in the form of a debit card that New Way Communications (New Way) is apparently providing debit card services without having first obtained a certificate of public convenience and necessity from this Commission, in violation of Rule 25-24.470, Florida Administrative Code. In addition, on January 29, 1997, we received a complaint regarding the Phone

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Express card issued by New Way Communications. The customer complained that the 800 access and customer service number had been disconnected.

In an effort to obtain more information regarding this situation, our staff sent a certified letter to New Way Communications informing it of its responsibility to obtain a certificate in order to provide debit card services. Our staff also requested that a response be provided by March 11, 1997. That letter was returned stamped "Forwarding Order Expired." On March 14, 1997, our staff mailed a second certified letter to New Way. This letter was returned stamped "Moved, Left No Address." In addition, our staff attempted, unsuccessfully, to contact New Way by the telephone number listed on the prepaid debit card. The number had been disconnected and no alternative address or telephone number could be located for the company.

Show Cause

Pursuant to Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, "...the necessary replies to inquires 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." It has been well over 15 days and New Way has not responded to any of our staff's inquiries regarding either certification or the complaint.

Due to the fact that New Way Communications has been unresponsive to our staff's inquiries, and because it appears that New Way Communications is providing telecommunications service without a certificate, we shall order New Way to show cause why it should not be fined \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response must contain specific allegations of fact or law. If New Way fails to respond to the show cause in writing within 20 days of the issuance of this Order, the fine shall be deemed assessed. The fine must be paid to the Commission for remittance to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. If the

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fine is not paid after reasonable collection efforts by this Commission, it will be forwarded to the Office of the Comptroller for collection.

Proposed Agency Action:

All IXCs shall cease providing service to New Way

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

(3) 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.

It appears that New Way is operating in Florida without a certificate. Accordingly, 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 New Way must contact the Commission at the conclusion of the show cause response 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 New Way Communications 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

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ORDERED that New Way Communications'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, New Way Communications 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 New Way Communications 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 New Way Communications 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. It is further

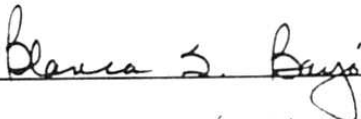
ORDERED that the portion of this Order that requires all certificated interexchange companies to cease providing service to New Way Communications is issued as proposed agency action and shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative 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

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

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ORDERED that in the event the Proposed Agency Action portion of this Order becomes final, and New Way Communications 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 30th day of September, 1997.



BLANCA S. BAYÓ, 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.

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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 October 20, 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 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 October 21, 1997.

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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.