

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Nationwide Communications of Michigan, Inc. for apparent violation of Rule 25-24.630, F.A.C., Rate and Billing Requirements, Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries, and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees.

DOCKET NO. 971317-TP
ORDER NO. PSC-98-0121-PCO-TP
ISSUED: January 22, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE
AND
NOTICE OF PROPOSED AGENCY ACTION ORDER
DIRECTING CERTIFICATED INTEREXCHANGE TELECOMMUNICATIONS PROVIDERS
TO DISCONTINUE SERVICE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein related to the discontinuation of underlying telecommunications services 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.

BACKGROUND

Nationwide Communications of Michigan, Inc. (Nationwide), is a provider of interexchange telecommunications service with

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Certificate No. 3549, and a provider of pay telephone services with Certificate No. 3950. Nationwide received its interexchange telecommunications certificate on April 29, 1994, and its pay telephone certificate on January 31, 1995.

On January 23, 1997, our staff received a complaint regarding apparent overcharges for calling card calls made from a hotel room. On January 28, 1997, our staff sent a letter to Nationwide requesting information regarding the alleged overcharges. On February 17, 1997, our staff sent a certified letter to Nationwide informing it of its failure to respond to the January 28, 1997, letter. On March 10, 1997, Nationwide informed our staff that the problem was due to a virus in its computer system, which corrupted the rate table data base, and that the problem had been corrected. On May 2, 1997, our staff sent a certified letter requesting Nationwide to identify the total number of calls overcharged, the total amount subject to refund, and the time frame in which the overcharges occurred. On May 14, 1997, Nationwide responded that this information did not exist and that it could not be recreated.

Because our staff believed that Nationwide could research the bills produced and estimate the number of calls and overcharges, it mailed a letter to Nationwide on May 21, 1997, citing Rule 25-4.019(1), Florida Administrative Code, which requires telephone companies to furnish the Commission with information concerning its operations, which the Commission may reasonably request and require, with respect to the requested information. Our staff also attempted to contact Nationwide by telephone on July 3, 1997, and July 10, 1997, as well as Nationwide's attorney on those dates. As of the date of this order, our staff has not received a formal response.

In addition, Nationwide is delinquent with respect to payment of its regulatory assessment fees for the year 1996 on both its pay telephone certificate and its interexchange certificate. The Division of Administration mailed certified letters on June 3, 1997, informing Nationwide of these delinquencies. The certified letter regarding the pay telephone delinquency was signed for and received, but as of the date of this order, the regulatory assessment fee, along with statutory penalties and interest, has not been received. In addition, also as of the date of this order, Nationwide has not made payment or communicated with our staff with respect to its delinquent interexchange regulatory assessment fee.

SHOW CAUSE

Certificate 3549

Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

As we have noted above, Nationwide has not submitted its regulatory assessment fee for the year 1996, along with statutory penalties and interest charges, with respect to its Certificate No. 3549 as an interexchange telecommunications services provider. Therefore, the company has apparently failed to comply with Rule 25-4.0161, Florida Administrative Code.

Also, Nationwide has not provided a sufficient response to inquiries regarding an apparent violation of Rule 25-24.630, Florida Administrative Code. This rule states, in part:

- (1) an operator services provider shall:
 - (a) charge and bill end-users no more than the Commission-approved rate for intrastate calls.

The complaint we received concerning calling card call overcharges has been resolved. Nationwide has, however, failed to provide the information requested that is necessary to determine the extent to which overcharges occurred. Therefore, not only does Nationwide appear to be in violation of Rule 25-24.630, Florida Administrative Code, it also appears to be in violation of Rule 25-4.043, Florida Administrative Code, which requires timely responses to staff inquiries.

Accordingly, we find it appropriate to order Nationwide to show cause why, with respect to its Certificate No. 3549, fines in the amounts of \$500 for failure to comply with Rule 25-4.0161, Florida Administrative Code; \$250 for apparent violation of Rule 25-24.630, Florida Administrative Code; and \$1,500 for failure to comply with Rule 25-4.043, Florida Administrative Code, should not be assessed or its certificate should not be canceled if the fines,

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the regulatory assessment fee, along with statutory penalty and interest, and requested information are not submitted within five business days after this order becomes final. If the fines are paid, they shall be remitted to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

Certificate No. 3950

Nationwide is also delinquent with respect to payment of its 1996 regulatory assessment fee, along with the statutory penalty and interest charges, with respect to its Certificate No. 3950 as a pay telephones services provider. It is therefore also in apparent violation of Rule 25-4.0161, Florida Administrative Code.

Accordingly, we find it appropriate to order Nationwide to show cause why, with respect to its Certificate No. 3950, a fine in the amount of \$500 for failure to comply with Rule 25-4.0161, Florida Administrative Code,, should not be assessed or its certificate should not be canceled if the fine and the regulatory assessment fee, along with statutory penalty and interest, are not remitted within five business days after this order becomes final. If the fine is paid, it shall be remitted to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

DISCONTINUATION OF UNDERLYING
INTEREXCHANGE TELECOMMUNICATIONS SERVICE

Rule 25-24.4701(3), Florida Administrative Code, states in part:

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

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discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

If Nationwide's Certificate No. 3549 is canceled, any intrastate interexchange service offered by Nationwide would be in violation of Rule 25-24.4701(3), Florida Administrative Code. Since we cannot readily identify which interexchange carrier provides service to Nationwide, we order that all certificated interexchange carriers shall discontinue service to Nationwide if Nationwide fails to comply with the terms of this order. Any interexchange carrier providing service to Nationwide must contact this Commission at the conclusion of the show cause response period 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 Nationwide Communications of Michigan, Inc., show cause in writing why it should not be fined in the amounts of \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code; \$250 for apparent violation of Rule 25-4.630, Florida Administrative Code; and \$1,500 for apparent violation of Rules 25-24.043, Florida Administrative Code, or have its certificate, Certificate No. 3549, canceled. It is further

ORDERED that Nationwide Communications of Michigan, Inc., show cause in writing why it should not be fined in the amount of \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, or have its certificate, Certificate No. 3950, canceled. It is further

ORDERED that any response to the Order to Show Cause filed by Nationwide Communications of Michigan, Inc., shall contain specific allegations of fact and law. It is further

ORDERED that any response to the Order to Show Cause shall be filed with the Director of the Division of Records and Reporting within 20 days of the issuance of this Order. It is further

ORDERED that upon receipt of Nationwide Communications of Michigan, Inc.'s response to the Order to Show Cause, and if it requests a hearing, further proceedings will be scheduled by the

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Commission, at which time Nationwide Communications of Michigan, Inc., will have an opportunity to contest the allegations in the body of this Order. It is further

ORDERED that if Nationwide Communications of Michigan, Inc., fails to timely respond to the Order to Show Cause or fails to submit the fines, the delinquent regulatory assessment fees, along with statutory penalties and interest, and the required information described in the body of this Order within five business days of the date of issuance of this Order, its certificate or certificates shall be canceled. It is further

ORDERED that any payment of fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. It is further

ORDERED that, if Nationwide Communications of Michigan, Inc.'s certificate, Certificate No. 3549, is canceled as a result of this proceeding, all certificated interexchange companies shall discontinue providing intrastate long distance service for resale to Nationwide Communications of Michigan, Inc., at the conclusion of this proceeding. It is further

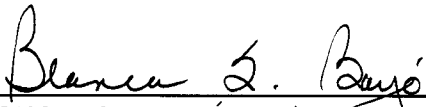
ORDERED that any certificated interexchange carriers providing service to Nationwide Communications of Michigan, Inc., shall contact this Commission at the conclusion of the response period indicated herein in order to determine the status of this proceeding. It is further

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 this docket shall remain open pending resolution of the Order to Show Cause.

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By ORDER of the Florida Public Service Commission, this 22nd
day of January, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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.

This order to show cause 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 February 11, 1998.

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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.

The action proposed herein related to the provision of underlying telecommunications service 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 February 12, 1998.

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 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.

M E M O R A N D U M

January 22, 1998

RECEIVED

JAN 22 1998

9:25

FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *GMS*

RE: DOCKET NO. 971317-TP - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST NATIONWIDE COMMUNICATIONS OF MICHIGAN, INC. FOR APPARENT VIOLATION OF RULE 25-24.630, F.A.C., RATE AND BILLING REQUIREMENTS, RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES, AND RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES.

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Attached is an ORDER TO SHOW CAUSE AND NOTICE OF PROPOSED AGENCY ACTION ORDER DIRECTING CERTIFICATED INTEREXCHANGE TELECOMMUNICATIONS PROVIDERS TO DISCONTINUE SERVICE to be issued in the above referenced docket. (Number of pages in order - 8)

CJP/bm

Attachment

cc: Division of Communications (Biegalski)

I: 971317sc.cjp

See 3, 6

FLORIDA PUBLIC SERVICE COMMISSION - RECORDS AND REPORTING

Requisition for Photocopying and Mailing

Date 1, 26, 98

Number of Originals 8

Copies Per Original 579

Requested By Rebecca

Item Presented

Agenda For (Date) _____

Order No. 98-0121

In Docket No. 971317

Notice of _____

For (Date) _____

In Docket No. _____

Other _____

Special Handling Instructions

Distribution/Mailing

Number	Distributed/Mailed To
<u>18</u>	<u>Commission Offices</u>
<u>1</u>	<u>Docket Mailing List - Mailed</u>
	<u>Docket Mailing List - Faxed</u>

Number	Distribution/Mailed To
<u>561</u>	<u>TI'S</u>
<u>10</u>	<u>RRR</u>

Note: Items must be mailed and/or returned within one working day after issue unless specified here:

Print Shop Verification

Job Number 259

Verified By W.S.

Date and Time Completed 1-27

Job Checked For Correctness and Quality (Initial) _____

Mail Room Verification

Date Mailed 4/27

Verified By A.G.