

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Amer-I-Net Services Corp. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 980165-TI
ORDER NO. PSC-98-0549-SC-TI
ISSUED: April 20, 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

BY THE COMMISSION:

I. BACKGROUND

On July 2, 1991, the Commission granted Amer-I-Net Services Corp (Amer-I-Net) certificate number 2671 to provide intrastate interexchange telecommunications service.

Thereafter, from May 5, 1997, through March 20, 1998, this Commission has received a total of 426 complaints against Amer-I-Net. Of those complaints received, 176 are apparent unauthorized carrier change (slamming) infractions in violation of Rule 25-4.118, Florida Administrative Code. The balance of the complaints are either pending response from the company or closure in the Division of Consumer Affairs.

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II. ALLEGED VIOLATIONS

Amer-I-Net uses sweepstakes display boxes with separable packets of letters of authorization (LOAs) attached to obtain new long distance customers. The sweepstakes entry form (used as an LOA) reviewed by the Commission appears to be in violation of Rule 25-4.118(3)(b), Florida Administrative Code. The statement required by the rule is not in a text size at least as large as any other text on the document.

Rule 25-4.118(3)(b), Florida Administrative Code, requires in pertinent part:

The page of the document containing the customer's signature shall contain a statement that the customer's signature or endorsement on the document will result in a change of the customer's long distance service provider and explain that only one long distance service provider may be designated for the telephone number listed; that the customer's selection will apply only to that number, and that the customer's local exchange company may charge a fee to switch service providers. **Such statement shall be clearly legible and printed in type at least as large as any other text on the page.** [emphasis added]

Another apparent violation of Rule 25-4.118(3)(b), Florida Administrative Code, is that the document as a whole appears to be misleading or deceptive. According to Rule 25-4.118(3)(b), Florida Administrative Code, in pertinent part:

If any such document is not used solely for the purpose of requesting a PIC change, then the document as a whole must not be misleading or deceptive. For purposes of this rule, the terms "misleading or deceptive" mean that, because of the style, format or content of the document, it would not be readily apparent to the person signing the document that the purpose of the signature was to authorize a PIC change, or it would be unclear to the customer who the new long distance service provider would be; that the customer's selection would apply only to the number listed and there could only be one long distance service provider for that number; or that the customer's local exchange company might charge a fee to switch service providers. [emphasis added]

Based on the complete sweepstakes display received by our staff, and the numerous consumer complaints, it appears that the forms Amer-I-Net uses for its sweepstakes entries, in combination with the sweepstakes display, are misleading and deceptive. The consumers thought that they were only entering a sweepstakes, not changing their long distance service provider. It also appears that Amer-I-Net is submitting numerous preferred interexchange carrier (PIC) changes with forged customer signatures. In addition, in some instances, the telephone number listed on the letter of authorization (LOA) is not the telephone number assigned to the person signing the LOA.

Examples of complaints received from consumers include the following:

On November 19, 1997, Ms. Santamarina advised staff that her long distance service was switched without authorization. Amer-I-Net's report stated that the company received a LOA signed by Mr. Santamarina. The company sent out a confirmation letter and received no adverse response. Amer-I-Net then considered the LOA to be valid and forwarded it for processing. Based on the response from the customer, the LOA is a forgery.

On December 24, 1997, Ms. Fran Buckelew notified staff that her long distance service was switched without authorization. Amer-I-Net stated in its report to staff that the company received a LOA signed by Mr. Elbert Buckelew. The company then mailed out a confirmation letter to the attention of Mr. Buckelew. Amer-I-Net received no adverse response to the letter, considered the LOA to be valid and forwarded it for processing. Upon receipt of a copy of the LOA, Ms. Buckelew notified staff that the signature on the LOA dated October 29, 1997, could not be that of her husband as he died on March 11, 1995.

On October 30, 1997, Mrs. Jacqueline Wendt advised staff that her long distance service was switched without authorization. Amer-I-Net's report stated that the company received a LOA signed by Mr. Wendt. In a letter from Mrs. Wendt dated January 9, 1998, she notified Mr. Crocker, attorney for Amer-I-Net, that the birth date listed on the LOA is not her husband's, the address listed on the LOA is misspelled, and the signature is not that of her husband.

On February 2, 1998, staff received a complaint regarding Amer-I-Net from Mr. Michael McKendall. Mr. McKendall stated that

his long distance service had been switched without authorization. Amer-I-Net's report stated that it received an LOA signed by Mr. McKendall. Further investigation determined that the signature on the LOA clearly did not match the signature of Mr. McKendall as evidenced by his signature on the letter dated January 22, 1998, his date of birth was listed incorrectly, and the city was misspelled.

Amer-I-Net responded to some of the slamming complaints by stating that it relied upon the written authorization submitted by its agent.

Rule 25-4.043, Florida Administrative Code, states "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." Of the one hundred seventy six (176) Commission inquiries related to slamming complaints, Amer-I-Net failed to timely respond to one hundred and nineteen (119).

Amer-I-Net has not satisfied this Commission that it is in compliance with our rules. Pursuant to Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of our rules and Florida Statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

We find that Amer-I-Net's apparent conduct in switching PICs without customer authorization and its failure to timely respond to Commission inquiries concerning customer complaints has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a

rule." Thus, any intentional act, such as Amer-I-Net's conduct at issue here, would meet the standard for a "willful violation."

III. CONCLUSION

Upon consideration, and based on the 176 apparent unauthorized carrier change infractions, we conclude that Amer-I-Net does not have adequate safeguards to protect consumers from unauthorized carrier changes. Accordingly, we hereby order Amer-I-Net to show cause in writing within 20 days of the effective date of this Order why it should not be fined \$10,000 per apparent slamming for a total of \$1,760,000 or have its certificate canceled for its apparent violations of Rule 25-4.118, Florida Administrative Code. We also find it appropriate to order Amer-I-Net to show cause in writing within twenty (20) days of the effective date of this Order why it should not be fined \$1500 per apparent violation of Rule 25-4.043, Florida Administrative Code, for an additional fine of \$178,500 or have its certificate canceled for its apparent violations of Rule 25-4.043, Florida Administrative Code. The total amount of fines to be assessed are \$1,938,000.

If Amer-I-Net timely responds to this Order, this docket shall remain open pending resolution of the show cause proceeding. If Amer-I-Net does not respond to the Commission's Order to Show Cause, the fines shall be deemed assessed. If Amer-I-Net fails to respond to this Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, Amer-I-Net's certificate shall be canceled. Any collected fine monies should be forwarded to the Office of the Comptroller for deposit in the state General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Amer-I-Net Services Corp. show cause in writing within 20 days of the issuance date of the order why it should not be fined \$10,000 per apparent violation for a total of \$1,760,000 or have its certificate canceled for apparent failure to comply with Rule 25-4.118, Florida Administrative Code. It is further

ORDERED that Amer-I-Net Services Corp. show cause in writing within twenty (20) days of the effective date of this Order why it should not be fined \$1500 per apparent violation of Rule 25-4.043, Florida Administrative Code, for an additional fine of \$178,500 or


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have its certificate canceled for its apparent violations of Rule 25-4.043, Florida Administrative Code. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and date set forth in the Notice of Further Proceedings and 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 fines indicated in the body of this Order. It is further

ORDERED that the Commission shall forward any payment of fines to the Office of the Comptroller for deposit in the state General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes.

By ORDER of the Florida Public Service Commission this 20th day of April, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CB

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.

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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 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 May 10, 1998.

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.