

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Corporate Services Telcom, Inc. For violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection.

DOCKET NO. 980950-TI
ORDER NO. PSC-98-1265-SC-TI
ISSUED: September 23, 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:

On June 1, 1996, the Commission granted Corporate Services Telcom, Inc. (CSTI) certificate number 4441 to provide intrastate interexchange telecommunications service. Thereafter, from July 31, 1996, through July 28, 1998, our Division of Consumer Affairs received 181 consumer complaints against CSTI. At least 55 of these complaints were closed by the Division of Consumer Affairs as unauthorized carrier change or "slamming" infractions in apparent violation of Rule 25-4.118, Florida Administrative Code.

It appears that CSTI has submitted preferred interexchange carrier (PIC) changes without proper authorization. Our further investigation also indicated that CSTI's corporate status was revoked by the Florida Secretary of State on September 26, 1997.

DOCUMENT NUMBER-DATE

10516 SEP 23 88

FPSC-RECORDS/REPORTING

Description of Complaints

Examples of complaints received from consumers include the following:

On December 23, 1997, Mr. Marvin Potter reported his long distance carrier had changed without his authorization. Review of the third-party verification tape revealed that the agent referred to the "Corporate Services Group Pricing Plan featuring AT&T lines and operators" thus concealing from the customer that he was agreeing to the switching of his long distance carrier.

On December 31, 1997, Mr. Jimmy Cliff, of the ABC Lending Company, filed a complaint that CSTI had changed his long distance carrier without authorization. Mr. Cliff was unsuccessful in his attempts to get CSTI to switch his service back to his carrier of choice. CSTI failed to meet Commission requirements for changing carriers. This complaint is also being investigated by the FCC.

On January 16, 1998, Mary E. Riley, President of Management and Concierge Services filed a complaint with the Commission, on behalf of her company, stating that her long distance company was switched without her permission. CSTI asserted that it had third party verification; however, tape verification indicated that CSTI did not properly identify itself as required by Commission rules. Again, it appears that the customer was misled.

On February 25, 1998, Ringo Yeargin filed a complaint with our Division of Consumer Affairs. Mr. Yeargin contends that his long distance carrier was switched by deception. He states that his wife gave permission to switch since she thought the CSTI agent represented AT&T and that she was upgrading her AT&T pricing package. CSTI failed to produce a verification tape.

On April 23, 1998, Nancy Pond, joint owner of Gulfstream Paint & Supplies, filed a complaint. Mrs. Pond asserts that her long distance carrier had been changed without authorization. CSTI, upon their own investigation, could not produce a valid, third-party verification.

Apparent Rules Violations

Rule 25-4.118 (2) (d), Florida Administrative Code, requires:

- (D) Ballots or letters will be maintained by the IXC for a period of one year

Rule 25-4.118 (6) (a) and (b), Florida Administrative Code, requires that the IXC shall provide the following disclosures when soliciting a change in service from the customer:

- (a) identification of the IXC
- (b) the purpose of visit or call is to solicit a change of the PIC of the customer

CSTI failed to produce ballots or letters of authorization (LOAs) of preferred interexchange carrier changes when requested by the Commission. The Division of Consumer Affairs requested third party verification on each of the above-described complaints. The failure to maintain LOAs as noted above is an apparent violation of Rule 25-4.118 (2) (d), Florida Administrative Code. Further, since some customers allege that CSTI did not identify itself or the purpose of the call, these complaints indicate that CSTI is also in apparent violation of 25-4.118 (6) (a) and (b), Florida Administrative Code, and may be operating in a willful and deceptive manner. Pursuant to Section 364.285, Florida Statutes, this Commission is authorized to impose upon any entity subject to its 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 the Commission's rules and 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).

Staff believes that CSTI's apparent conduct in switching PICs without customer authorization 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

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1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission 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 CSTI's conduct at issue here, would meet the standard for a "willful violation."

Based on the number of complaints received by the Division of Consumer Affairs, and the 55 complaints closed by the Division of Consumer Affairs as slamming violations, we conclude that there is sufficient cause to order CSTI to show cause in writing within 21 days of the issuance date of the order why it should not be fined \$10,000 per infraction for a total of \$550,000 or have its certificate canceled for its apparent violations of Rule 25-4.118, Florida Administrative Code.

CSTI shall have 21 days from the issuance of this Order to Show Cause to respond in writing why it should not be fined \$550,000 or have its certificate canceled. If CSTI timely responds to this Order, this docket should remain open pending resolution of the show cause proceeding. If CSTI does not respond to the Order to Show Cause, the fines shall be deemed assessed. If CSTI fails to respond to the Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, CSTI's certificate shall be canceled and this docket closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Corporate Services Telcom, Inc., shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$550,000 for apparent violations of Rule 25-4.118, Florida Administrative Code. It is further

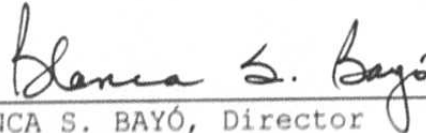
ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, waiver of the right to hearing, and will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

ORDERED that in the event that Corporate Services Telcom, Inc., fails to respond to this Order and the fines are not received

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within five business days after the expiration of the show cause response period, Corporate Services Telcom, Inc.'s certificate shall be canceled and this docket will be closed administratively.

By ORDER of the Florida Public Service Commission this 23rd day of September, 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.

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 this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response 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 14, 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 and a default pursuant to Rule 28-106.111(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.