

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Brittan Communications International, Inc. d/b/a BCI Corp. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

DOCKET NO. 971491-TI

In re: Request for cancellation of Interexchange Telecommunications Certificate No. 4461 by Brittan Communications International, Inc. d/b/a BCI Corp., effective 1/26/99.

DOCKET NO. 990097-TI
ORDER NO. PSC-99-0984-PAA-TI
ISSUED: May 17, 1999

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING VOLUNTARY CANCELLATION OF CERTIFICATE;
IMPOSING FINES; REQUIRING PAYMENT OF REGULATORY ASSESSMENT FEES
OR CANCELING INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE; AND
DECLINING TO SHOW CAUSE FOR APPARENT SLAMMING VIOLATIONS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein except our decision to decline to issue an Order to Show Cause, 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.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On August 10, 1996, the Commission granted Brittan Communications International, Inc. d/b/a BCI Corp. (BCI) Certificate Number 4461 to provide intrastate interexchange telecommunications service. BCI reported gross operating revenues of \$50,617,748 and intrastate revenues of \$1,494,534 on its Regulatory Assessment Fee Return for the period January 1, 1997, through December 31, 1997. BCI did not file a regulatory assessment fee form for the year 1998. As a provider of interexchange telecommunications service in Florida, BCI is subject to the rules and regulations of this Commission.

I. Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection

Docket No. 971491-TI was opened to investigate numerous consumer complaints of apparent unauthorized carrier changes received by the Division of Consumer Affairs. During the investigation it was discovered that staff had prior contact with BCI regarding the issue of unauthorized carrier changes.

On January 21, 1997, Quincy Telephone Company (Quincy) contacted this Commission regarding the large percentage of carrier change requests received from BCI which could not be processed due to apparent invalid information on the LOA or PIC freezes on the account. Quincy requested that it be allowed to stop processing LOAs submitted by BCI until it was determined that the carrier change requests are legitimate. Based on this information, a staff request was mailed to BCI regarding the concerns raised by Quincy and requesting information on BCI's marketing techniques for carrier change requests. On February 25, 1997, BCI responded that it operated in compliance with the Commission's rules; that it marketed its long distance service through the use of sweepstakes; and that although it did not believe that the current display and application form was misleading, BCI was in the process of modifying it.

On March 10, 1997, a copy of BCI's new display and entry forms were requested. In addition, BCI was asked to review all of the LOAs submitted to Quincy for accuracy. On April 9, 1997, BCI responded that it had tried to contact the individuals on the LOAs in question and was able to confirm with some of them that they did sign an LOA and that in so doing, they had intended to switch to BCI's long distance service. Upon receipt of the revised display

box and registration forms, it was determined that BCI was in compliance with the Commission rules.

Thereafter, on January 22, 1999, the Commission received a letter from BCI stating that its primary lender was foreclosing on all of the company's assets and therefore BCI would cease doing business.

Conclusion

Based on our review of the revised LOA form which clearly states "Long Distance Service Application" in big bold letters and which is severable so that a customer may choose to only enter the sweepstakes, we conclude that BCI's LOA is not misleading. Further, the customers' complaints do not establish that the customers were misled. In addition, all of the customers who filed complaints have been credited and switched back to their preferred carrier by BCI. Therefore, based on the foregoing, we decline to order BCI to show cause why it should not be fined for violations of Rule 25-4.118, Florida Administrative Code.

II. Rule 25-24.474 (2), Florida Administrative Code, Cancellation of a Certificate

BCI has not complied with Rule 25-24.474 (2), Florida Administrative Code, which states:

(2) If a certificated company desires to cancel its certificate, it shall request cancellation from the Commission in writing and shall provide the following with its request:

(a) Statement of intent and date to pay Regulatory Assessment Fee.

(b) Statement of why the certificate is proposed to be cancelled.

(c) A statement on treatment of customer deposits and final bills.

(d) Proof of individual customer notice regarding discontinuance of service.

To date, BCI has neither notified our staff of its intentions regarding customer deposits and final bills nor provided proof of individual customer notice regarding discontinuance of service. Accordingly, it appears that BCI has failed to comply with Rule 25-24.474 (2), Florida Administrative Code.

III. Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees

After researching BCI's account, our staff determined that BCI has failed to submit the Regulatory Assessment Fees for the year 1998. Also, accrued statutory penalties and interest charges for the year 1998 have not been paid. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161 (2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. All entities that apply for certification receive a copy of our rules governing Interexchange Telecommunications service. All applicants must attest that these rules have been received and understood by the applicant and an affidavit must be attached to the application in order for the application to be processed.

Pursuant to Section 350.113(4), Florida Statutes, the RAFs forms for the period of January 1 through December 31 are mailed to entities at least 45 days prior to the date that payment of the fees is due. BCI has been given adequate opportunity to pay; yet it has failed to pay RAFs. Thus, it appears that BCI has violated Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code.

Conclusion

For the reasons described above, pursuant to Rule 25-24.474(1)(b) and (c), Florida Administrative Code, we deny Brittan Communications International, Inc. d/b/a BCI Corp., request for voluntary cancellation of Interexchange Telecommunications Certificate No. 4461 because it has not complied with the requirements of Rule 25-24.474(2), Florida Administrative Code. Further, pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company fails to comply with Commission rules. Accordingly, we find it appropriate to cancel BCI's certificate, effective January 26,

1999, for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, unless BCI pays a \$500 fine and remits all past due regulatory assessment fees for the year 1998, along with statutory penalties and interest charges accrued, to the Florida Public Service Commission.

BCI shall comply with these requirements within five business days from the date this Order becomes final. The fine will be remitted to the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.516, Florida Statutes.

When the appropriate fees, statutory penalties, interest charges, and fine are received, Docket No. 990097-TI shall be closed. Should BCI fail to comply with this Order within five business days from the date this Order becomes final, BCI shall have its certificate canceled, the \$500 fine shall be forwarded to the Office of the Comptroller for collection, and Docket No. 990097-TI shall be closed. The cancellation of the certificate and the closing of Docket No. 990097-TI in no way diminishes BCI's obligation to pay applicable delinquent regulatory assessment fees for 1998 and 1999, as well as statutory penalties and interest charges accrued.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we decline to order BCI to show cause why it should not be fined for apparent violations of Rule 25-4.118, Florida Administrative Code. It is further

ORDERED that docket 971491-TI is closed. It is further

ORDERED that we hereby deny Brittan Communications International, Inc. d/b/a BCI Corp.'s request for cancellation of Interexchange Telecommunications Certificate No. 4461. It is further

ORDERED that Brittan Communications International, Inc. d/b/a BCI Corp., shall pay the past due regulatory assessment fees, statutory penalties, interest charges, and a \$500 fine to the Florida Public Service Commission, or have its certificate canceled, effective January 26, 1999, for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, within five business days from the date this

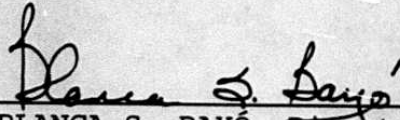
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Order becomes final. Upon receipt, the fine will be transmitted to the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that should Brittan Communications International, Inc. d/b/a BCI Corp. fail to comply with this Order, Brittan Communications International, Inc. d/b/a BCI Corp.'s certificate shall be canceled, the \$500 fine shall be assessed, and Docket No. 990097-TI be closed. 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.

By ORDER of the Florida Public Service Commission this 17th day of May, 1999.



BLANCA S. BAYO, Director
Division of Records and Reporting

(S E A L)

CB/KMP

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 that is available under Section 120.57, 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 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. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 June 7, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a consummating order.

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.