

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Netfax Communications, Inc. for apparent violation of Rule 25-24.910, 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. 010310-TI  
ORDER NO. PSC-01-1149-SC-TI  
ISSUED: May 21, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER TO SHOW CAUSE

BY THE COMMISSION:

On January 4, 2001, our staff received a fax from Mr. Ross Rosenberg. He indicated that he was representing two companies that had entered into a contract with a Florida corporation, Netfax Communications, Inc., to distribute prepaid calling cards. Netfax Communications, Inc., is apparently doing business as NFT Communications, yet does not have that name registered as a fictitious name with the Department of State/Division of Corporations. Mr. Rosenberg expressed concern that neither Netfax Communications, Inc., nor NFT Communications are registered with us as either prepaid calling services providers or resellers. Mr. Rosenberg provided us with a copy of the prepaid calling card identifying NFT Communications as the provider.

That same day, our staff sent Netfax Communications, Inc., a certified letter in which it informed the company that a certificate from this Commission was required to provide

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interexchange telecommunications services in Florida. Netfax Communications, Inc., was also instructed to complete and return an application by January 19, 2001. Thereafter, on January 9, 2001, the return receipt for the certified letter was signed by the company.

On February 5, 2001, having received no written response to its January 4, 2001 letter, our staff sent Netfax Communications, Inc., a second certified letter again requesting completion of an application for certification to provide long distance interexchange services in Florida. This time the company was given until February 20, 2001, to respond. The certified letter was signed for on February 7, 2001.

Once again, having received no written response to either the January 4, 2001, or February 5, 2001, certified letters, on March 12, 2001, this docket was opened to investigate whether Netfax Communications, Inc., should be required to show cause for apparent violation of Rules 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.

On April 10, 2001, Michael Greenfield, a representative of the company, called and left two messages for our staff. Attempts to reach Mr. Greenfield or leave him voice mail were, however, unsuccessful, as his voice mailbox was full.

We are vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285, 364.33, and 364.337, Florida Statutes.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED

Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, states:

A company shall not provide prepaid calling services without first obtaining a certificate of public convenience and necessity as a local exchange company, alternative local exchange company, or interexchange company.

Pursuant to Section 364.285, Florida Statutes, this Commission is authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of this Commission, or any provision of Chapter 364. Utilities are charged with knowledge of our 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).

It appears to us that Netfax's conduct, by providing prepaid calling services to wholesale distributors for dispatch to retail customers, constitutes provisioning long distance interexchange services without a certificate of public convenience and necessity, in apparent violation of Rule 25-24.910, Florida Administrative Code. It also appears that this apparent violation 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, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., 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 Netfax's conduct at issue here, would meet the standard for a "willful violation."

Therefore, upon consideration, we hereby order Netfax to show cause in writing within 21 days of the issuance of this Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The company's response should contain specific allegations of fact and law. If Netfax fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing waived, and the fine shall be deemed assessed. If Netfax pays the fine, it shall be remitted to the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes. If the company fails to respond to the Order to Show Cause, and the fine

is not paid within ten business days after the expiration of the show cause response period, the fine shall be forwarded to the Office of the Comptroller for collection.

RESPONSE TO COMMISSION STAFF INQUIRIES

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, 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.

As explained above, our staff sent a certified letter to Netfax, dated January 4, 2001, and enclosed an application to provide long distance interexchange service and a copy of applicable rules for prepaid calling service providers and requested a written response by January 19, 2001. On January 9, 2001, the return receipt for the January 4, 2001, letter was signed. Although our staff did receive a telephone call from Netfax stating that the application would be completed, the company did not submit the required application, nor did it respond to a second certified letter regarding this matter.

We find that Netfax's apparent failure to respond to our staff's inquiries constitutes a willful violation of Rule 25-4.043, Florida Administrative Code. Therefore, we hereby order Netfax to show cause in writing within 21 days of the issuance of this Order why it should not be fined \$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 and law. If Netfax fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing waived, and the fine shall be deemed assessed. If Netfax pays the fine, it shall be remitted to the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes. If the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the show cause response

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period, the fine shall be forwarded to the Office of the Comptroller for collection.

It is therefore

ORDERED by the Florida Public Service Commission that Netfax Communications, Inc., d/b/a NFT Communications shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.910, Florida Administrative Code. It is further

ORDERED that Netfax Communications, Inc., d/b/a NFT Communications shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code. It is further

ORDERED that the company's responses shall contain specific allegations of fact and law. It is further

ORDERED that if the company fails to respond within 21 days of the issuance of this Order or request a Section 120.57, Florida Statutes, hearing, the facts shall be deemed admitted, the right to hearing shall be deemed waived, and the fines shall be deemed assessed. It is further

ORDERED that if Netfax pays the fine, it shall be remitted to the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes. It is further

ORDERED that if the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the 21-day response period, the fine shall be forwarded to the Office of the Comptroller for collection, and this docket may be closed administratively. It is further

ORDERED that if the company timely responds to the this Order or timely requests a hearing, this docket shall remain open pending resolution of the show cause proceedings.

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By ORDER of the Florida Public Service Commission this 21st  
Day of May, 2001.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

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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

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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 June 11, 2001.

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.