

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of CardMart USA, 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. 011151-TI

In re: Compliance investigation of True Time Communication, Inc. for apparent violation of Rule 25-24.910, F.A.C., Certificate of Public Convenience and Necessity Required.

DOCKET NO. 011327-TI

In re: Compliance investigation of MAF Global Telecommunications, Inc. for apparent violation of Rule 25-24.910, F.A.C., Certificate of Public Convenience and Necessity Required.

DOCKET NO. 011328-TI  
ORDER NO. PSC-01-2257-PAA-TI  
ISSUED: November 19, 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

NOTICE OF PROPOSED AGENCY ACTION ORDER IMPOSING FINES FOR VIOLATION OF RULES 25-4.043 AND 25-24.910, FLORIDA ADMINISTRATIVE CODE.

DOCUMENT NUMBER DATE

14599 NOV 19 01

FPSC-COMMISSIONER CLERK

- ORDER NO. PSC-01-2257-PAA-TI  
DOCKETS NOS. 011151-TI, 011327-TI, 011328-TI  
PAGE 2

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein 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.

CASE BACKGROUND

On July 2, 2001, our staff mailed a certified letter to Mr. Frank Guagliardo notifying him that CardMart USA, Inc. (CardMart), by providing prepaid calling services in Florida, was apparently operating in violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. That letter also asked Mr. Guagliardo if True Time Communication, Inc. (True Time), Tech Tele Communications, Inc. (Tech Tele), and MAF Global Telecommunications, Inc. (MAF) were providing prepaid calling services. Mr. Guagliardo was requested to apply for a certificate of public convenience and necessity for CardMart and to provide by July 18, 2001, a written response to our questions regarding the other companies.

On July 9, 2001, Mr. Guagliardo signed for and received our correspondence, as evidenced by the United States Postal Service's certified mail receipt. On August 1, 2001, our staff called Mr. Guagliardo to remind him that we had not received a response to the July 2, 2001, correspondence. Mr. Guagliardo was not available to take the call. A message was left with Mr. John Vann requesting that Mr. Guagliardo contact us. Mr. Vann advised that Mr. Guagliardo was currently at Radiant's facilities and he would have Mr. Guagliardo call as soon as he returned to the office.

Having received no written response or phone call from Mr. Guagliardo, on August 23, 2001, Docket No. 011151-TI was opened to investigate CardMart for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries and Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. CardMart failed to respond to our correspondence of July 2, 2001. In addition, CardMart appears to be providing prepaid calling services in Florida without certification by this Commission.

Believing that True Time and MAF may also have provided or may be providing prepaid calling services, on October 3, 2001, Docket Nos. 011327-TI and 011328-TI were opened to investigate each company, respectively, for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. Because Mr. Guagliardo is an officer or director in each of the companies associated with these proceedings and we have documentation relating Mr. Guagliardo to these entities, we will address Docket Nos. 011151-TI, 011327-TI and 011328-TI collectively. We did not find any evidence that Tech Tele was providing or did provide any prepaid calling services.

SUMMARY OF APPARENT VIOLATIONS

DOCKET NO.	COMPANY	APPARENT VIOLATION	PROPOSED FINE
011151-TI	CardMart	Failure to respond to staff's inquiries.	\$10,000
011151-TI	CardMart	Operating without a certificate.	\$25,000
011327-TI	True Time	Operating without a certificate.	\$25,000
011328-TI	MAF	Operating without a certificate.	\$25,000

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

DISCUSSION OF ISSUES

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.

- ORDER NO. PSC-01-2257-PAA-TI  
DOCKETS NOS. 011151-TI, 011327-TI, 011328-TI  
PAGE 4

By Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to its 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 the Commission, or any provision of Chapter 364, Florida Statutes. 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).

We find that CardMart's conduct, by failing to respond to our inquiries, in apparent violation of Commission Rule 25-4.043, Florida Administrative Code, 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, 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 CardMart's conduct at issue here, would meet the standard for a "willful violation."

Therefore, we hereby impose a fine against CardMart of \$10,000, in Docket No. 011151-TI, for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The fine shall be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. If this Order is not protested and the fine is not received within five business days after the issuance of the Consummating Order, the collection of the fine shall be referred to the Office of the Comptroller.

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.

After learning that CardMart may be providing prepaid calling services in Florida, we initiated an investigation. During the investigation, we analyzed information supplied by a prepaid calling card distributor, information obtained from the Secretary of State's Division of Corporations, and information from CardMart's website. Also, a search was conducted in the Division of Corporation's database. We discovered that Mr. Frank Guagliardo is directly associated with four companies that may currently or may have previously provided prepaid calling services in Florida. The four companies are CardMart, MAF, True Time, and Tech Tele. The Division of Corporations' records identify Mr. Guagliardo as an officer or director in each company.

The investigation disclosed that True Time and MAF are currently or have previously provided prepaid calling services in apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. During the investigation, a phone call was placed to CardMart's toll-free customer service number. The customer service representative was asked if CardMart sells prepaid calling cards in Florida. CardMart's customer service representative responded affirmatively and was prepared to accept an order for purchase of cards to be used for Florida intrastate long distance service.

In addition, CardMart's website identifies itself as the carrier services provider for the Dawn's Early Light, the Global Connect, the Maracas, and the US-MEX prepaid calling cards. The US-MEX, Global Connect, and Maracas prepaid calling cards show that CardMart is the carrier services provider.

As additional evidence that CardMart is a prepaid calling services provider, CardMart offers the customers an opportunity to recover losses on prepaid calling cards they purchased from True Time. By making purchases of CardMart's products, the customers can receive a 10% discount to offset losses experienced on True Time's prepaid calling cards. We note that Mr. Guagliardo is a key player in both CardMart and True Time.

We also believe that CardMart may have known of the requirement to obtain a certificate of public convenience and necessity from the Commission before entering the telecommunications services market, even prior to our July 2, 2001, certified letter. The Regnum Group is an Incorporator, wherein Mr. Kenneth Jacobi signed on behalf of Regnum Group for CardMart's Articles of Amendments to Articles of Incorporation that were adopted by the Incorporator. Shareholder action was not required. Mr. Jacobi has filed many applications for certificates of public convenience and necessity for other telecommunications companies in Florida and he is the point of contact on several interexchange company tariffs on file with this Commission. Mr. Jacobi is knowledgeable of the Commission's rules and, through this association, CardMart may have been aware of the certification requirement.

CardMart was provided ample notice and an opportunity to comply with our rules. We find that CardMart's practice of providing telecommunications services without a certificate constitutes a willful violation of a lawful rule of the Florida Public Service Commission. Therefore, we hereby fine CardMart \$25,000, in Docket No. 011151-TI, for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The fine shall be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. If this Order is not protested and the fine is not received within five business days after the issuance of the Consummating Order, the collection of the fine shall be referred to the Office of the Comptroller.

After learning that True Time may be providing prepaid calling services in Florida, we initiated an investigation. During the investigation, we analyzed information supplied by a prepaid calling card distributor and information obtained from the Secretary of State's Division of Corporations. The Division of Corporations' records identify Mr. Guagliardo as an officer or director in True Time, as well as other corporations.

Mr. Guagliardo mailed a form letter to customers of True Time. The purpose of Mr. Guagliardo's correspondence was to notify customers that the company would make refunds by replacing problem

ORDER NO. PSC-01-2257-PAA-TI  
DOCKETS NOS. 011151-TI, 011327-TI, 011328-TI  
PAGE 7

cards on each order of new cards. We believe that correspondence clearly demonstrates that True Time was providing prepaid calling services in apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. We also note that to receive a refund for problem cards, a customer must place an order to purchase new cards. Requiring customers to buy additional products to receive replacements for defective products is a questionable practice.

In the July 2, 2001, certified letter, we provided True Time notice and an opportunity to comply with the our rules. True Time has failed to take any action. We find that True Time's practice of providing telecommunications services without a certificate constitutes a willful violation of a lawful rule of the Florida Public Service Commission under the same legal analysis set forth earlier.

Therefore, we hereby fine True Time \$25,000, in Docket No. 011327-TI, for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The fine shall be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. If this Order is not protested and the fine is not received within five business days after the issuance of the Consummating Order, the collection of the fine shall be referred to the Office of the Comptroller.

After learning that MAF may be providing prepaid calling services in Florida, we initiated an investigation. During the investigation, we analyzed information supplied by a prepaid calling card distributor and information obtained from the Secretary of State's Division of Corporations. The Division of Corporations' records identify Mr. Guagliardo as an officer or director in MAF, as well as other corporations.

MAF is identified as the network provider on prepaid calling cards, USA Across the Border and Nation Call. We believe that clearly demonstrates that MAF is providing prepaid calling services in apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required.

ORDER NO. PSC-01-2257-PAA-TI  
DOCKETS NOS. 011151-TI, 011327-TI, 011328-TI  
PAGE 8

In our July 2, 2001, certified letter, we provided MAF notice and an opportunity to comply with our rules. MAF has failed to take any action. We find that MAF's practice of providing telecommunications services without a certificate constitutes a willful violation of a lawful rule of the Florida Public Service Commission under the same legal analysis set forth above.

Therefore, we hereby fine MAF \$25,000, in Docket No. 011328-TI, for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The fine shall be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. If the Commission's Order is not protested and the fine is not received within five business days after the issuance of the Consummating Order, the collection of the fine shall be referred to the Office of the Comptroller.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that fines are hereby imposed against CardMart USA, Inc., True Time Communication, Inc., and MAF Global Telecommunications, Inc., as described in the body of this Order. It is further

ORDERED that if this Order is not protested and the fine is not received within five business days of the Consummating Order the fine shall be referred to the Comptroller's Office for further collection. It is further

ORDERED that a protest in one Docket shall not prevent this Order from becoming final as it applies in another Docket. It is further

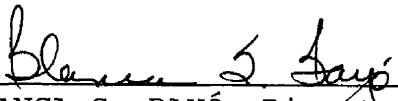
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, 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



ORDER NO. PSC-01-2257-PAA-TI  
DOCKETS NOS. 011151-TI, 011327-TI, 011328-TI  
PAGE 9

ORDERED that in the event this Order becomes final, these Dockets shall be closed.

By ORDER of the Florida Public Service Commission this 19th Day of Novmeber, 2001.

  
\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

CLF

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak

- ORDER NO. PSC-01-2257-PAA-TI  
DOCKETS NOS. 011151-TI, 011327-TI, 011328-TI  
PAGE 10

Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 10, 2001.

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.