

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Telecore Communications for apparent violation of Rule 25-24.470, 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. 020665-TI
ORDER NO. PSC-02-1231-PAA-TI
ISSUED: September 9, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING PENALTIES

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.

I. CASE BACKGROUND

In November of 2001, our staff became aware of prepaid telephone calling cards issued by TeleCore Communications Corp. (TeleCore), a company not holding a Certificate of Public Convenience and Necessity issued by this Commission. On November 21, 2001, Mr. David O. Klein, Counsel representing Orion Telecommunications Corp. (Orion), submitted a written response to our letter of inquiry into the prepaid calling services provided by

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TeleCore. In his letter, Mr. Klein indicated that TeleCore is a wholly-owned subsidiary of Orion.

On January 9, 2002, we sent a certified letter to Mr. George Gregory, Attorney for Orion, informing TeleCore of our correspondence with Mr. Klein and requesting a written reply by January 25, 2002. No reply was received, and on January 25, 2002, our staff called Orion and was informed that Mr. Gregory is no longer employed by Orion and that Mr. Avery S. Fischer has assumed his duties. Our staff was unable to speak with Mr. Fischer and left him a voice mail message. Subsequently, we sent Mr. Fischer a facsimile of our letter addressed to Mr. Gregory, dated January 9, 2002.

On January 28, 2002, Mr. Fischer, General Counsel to Orion, submitted a facsimile, stating that he was new to the company and had no knowledge regarding TeleCore. Mr. Fischer requested more time to review the issues and discuss the matter with outside counsel.

On June 5, 2002, our staff received an anonymous letter from an individual who visited Orlando and purchased a prepaid phone card branded as "Express Mexico" listing TeleCore Communications as the service provider. Thereafter, on June 10, 2002, we sent Mr. Fischer a certified letter via U.S. Postal Service regarding the provisioning of prepaid calling services in Florida by TeleCore. In that letter, we requested a written reply by June 21, 2002.

On June 17, 2002, we sent a letter to Mr. Fischer at Orion requesting a written response to a complaint received from a Florida consumer regarding the prepaid calling services provided by TeleCore through a prepaid phone card branded as "True Connect Latin America." A reply was requested by July 9, 2002. On June 17, 2002, we received the U.S. Postal Service "green card" receipt for our letter dated June 10, 2002, indicating that the company received our letter.

Because no responses have been forthcoming by TeleCore, on July 9, 2002, this docket was opened to address TeleCore's apparent violation of Rule Nos. 25-24.470 and 25-4.043, Florida Administrative Code.

II. ANALYSIS

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

A company shall not provide PPCS without first obtaining a certificate of public convenience and necessity as a local exchange company, alternative local exchange company, or interexchange company. The name used as the provider of PPCS printed on the prepaid calling card shall appear identical to the name in which the certificate is issued. A "doing business as" name may be used in lieu of the certificated name if it is registered as a fictitious name with the Florida Division of Corporations and reflected on the certificate before the name is used on the card.

During the course of our investigation into several prepaid phone cards and consumer complaints, we determined that Telecore is providing prepaid calling services to the public in Florida and should have obtained an IXC certificate. Our staff has obtained four different prepaid phone cards listing Telecore Communications as the prepaid calling card services provider. Further, our staff called the customer service number (1-800-643-3185) printed on the back of the phone cards to obtain contact information for Telecore. The customer service representative stated that Orion and Telecore are the same company and any questions should be addressed to Orion.

Mr. Klein, former outside Counsel to Orion, indicated in his letter dated November 16, 2001, that Telecore is a wholly-owned corporate subsidiary of Orion and that Telecore will file an application for a certificate. In addition, in his facsimile dated January 28, 2002, Mr. Fischer, General Counsel for Orion, indicated he would investigate the certification issue and respond to us accordingly. We sent another letter to Mr. Fischer on June 10, 2002, requesting information regarding Telecore's provision of prepaid calling services in Florida and its relationship to Orion. As of August 15, 2002, Mr. Fischer has not responded.

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Further, we determined that Telecore Communications Corp. is registered with the New York State, Department of State, Division of Corporations as an active Domestic Business Corporation. The process service address listed is: Orion Telecommunications Corp., 42-40 Bell Boulevard, Bayside, New York, 11361. Therefore, it appears that Telecore is a wholly-owned corporate subsidiary of Orion and any correspondence sent to the above address should be received by the principals directing Telecore.

Based on the aforementioned, we find that the principals responsible for Telecore are aware of the company's requirement to obtain a certificate and have been given ample opportunity to submit an application. We have repeatedly attempted to contact the company to resolve this issue. It appears that Telecore is ignoring our inquiries and continuing to provide prepaid calling services in Florida without first obtaining a certificate, in apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required.

We find that Telecore's apparent violation of Rule 25-24.910, Florida Administrative Code, is "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, this 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 Telecore's conduct at issue here, would meet the standard for a "willful violation."

By 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 per day 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. 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'

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will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Accordingly, we hereby impose a \$25,000 penalty on Telecore for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The penalty shall be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If this Order is not protested and the payment of the penalty is not received within fourteen calendar days after the issuance of the Consummating Order, the collection of the penalty shall be referred to the Office of the Comptroller. Further, if Telecore Communications Corp. fails to timely protest this Order, and fails to obtain an IXC Certificate of Public Convenience and Necessity, the company shall immediately cease and desist providing prepaid calling services in Florida upon issuance of the Consummating Order until the company obtains an IXC Certificate of Public Convenience and Necessity.

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.

We sent Telecore two letters, one certified, requesting a written response to inquiries regarding the company's provision of prepaid calling services in Florida and customer complaints. The U.S. Postal Service "green card" receipt indicates that the company received our letter dated June 10, 2002.

Both communications involve a consumer complaint regarding a prepaid phone card listing Telecore Communications as the service provider. One of the cards is branded as "True Connect Latin America" and the other is branded as "Express Mexico." Our staff called the customer service number listed on the back of each phone card to obtain the contact information for Telecore. The customer service representative stated that Telecore and Orion are the same

company. In addition, as stated earlier, we determined that Telecore Communications Corp. is registered with the New York State, Department of State, Division of Corporations, and lists its service address as Orion Telecommunications Corp., 42-40 Bell Boulevard, Bayside, New York. Therefore, the company should have responded to our correspondence sent to the above address.

In our letter dated June, 10, 2002, a reply was due on June 21, 2002, and for the letter dated June 17, 2002, a reply was due on July 9, 2002. As of August 15, 2002, Telecore has not submitted the necessary replies within 15 days, in apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.

Therefore, we find that Telecore's apparent violation of Rule 25-4.043, Florida Administrative Code, is also "willful" in the sense intended by Section 364.285, Florida Statutes, as described earlier in this Order.

Under Section 364.285, Florida Statutes, as discussed earlier in this Order, we are authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 per day 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. Accordingly, we impose a \$10,000 penalty on Telecore Communications Corp. for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The penalty shall be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If this Order is not protested and the payment of the penalty is not received within fourteen calendar days after the issuance of the Consummating Order, the collection of the penalty shall be referred to the Office of the Comptroller.

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

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that TeleCore Communications Corp is hereby penalized in the amount of \$25,000 for failure to comply with Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. It is further

ORDERED that TeleCore Communications Corp is hereby penalized in the amount of \$10,000 for failure to comply with Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. It is further

ORDERED that the provisions of this order be issued as a proposed agency action and shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if the penalties are not received within 14 calendar days after issuance of the Consummating Order, the amount shall be forwarded to the Office of the Comptroller for collection. It is further

ORDERED that if TeleCore Communications Corp, fails to timely protest the Commission's Order, or fails to obtain an IXC Certificate of Public Convenience and Necessity, upon issuance of the Consummating Order, the company will be required to immediately cease and desist providing interexchange telecommunications services in Florida until it obtains an IXC Certificate of Convenience and Necessity. It is further

ORDERED that this docket be closed administratively upon either the receipt of the payment of the penalties, or upon referral of the penalties to the Office of the Comptroller for collection.

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By ORDER of the Florida Public Service Commission this 9th Day
of September, 2002.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
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.

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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 Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 30, 2002.

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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.