

In re: Compliance investigation of AmericanFone, LLC 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. 020667-TI  
ORDER NO. PSC-02-1446-PAA-TI  
ISSUED: October 21, 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 APPROVING SETTLEMENT

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 April 26, 2002, we received a complaint from a Florida consumer regarding billing by AmericanFone, LLC (AmericanFone) on her credit card for long distance telephone services.

On April 29, 2002, our staff sent a certified letter via U.S. Postal Service to AmericanFone requesting that the company investigate the customer complaint and submit its reply to staff by

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May 17, 2002. Our staff also requested that AmericanFone submit its application for an interexchange company (IXC) certificate to us by May 31, 2002.

On May 6, 2002, our staff received the U.S. Postal Service "green card" receipt indicating that Mr. Gilbert Carrillo signed for and received staff's certified letter on May 2, 2002.

As no response was received, on June 14, 2002, our staff called AmericanFone at the number listed on the billing notification sent to the customer (1-888-741-0741). A recorded message indicated that all customer service representatives were busy. Subsequently, it was determined that AmericanFone has the same contact information as Planet Earth Communications (PEC), and that Mr. Michael Reed is the co-founder and CEO of PEC. Our staff also determined that AmericanFone, iPhoneBill.com, and PEC are apparently the same entity.

Subsequently, on June 17, 2002, our staff sent a facsimile of its certified letter dated April 26, 2002, to Mr. Michael Reed. It was requested that Mr. Reed review staff's letter and provide a written reply by June 28, 2002. Again, no reply was received, and on July 9, 2002, this docket was opened to address AmericanFone's apparent violation of Rule Nos. 25-24.470 and 25-4.043, Florida Administrative Code.

On August 6, 2002, Counsel for AmericanFone called our staff to inquire about the purpose of the docket and a possible resolution to the apparent rule violations. Thereafter, on August 29, 2002, AmericanFone submitted its proposal to settle and resolve the apparent rule violations cited in this docket (Attachment A). On September 9, 2002, we also received the company's response to the customer complaint, which indicates that the complaint has been resolved to the customer's satisfaction.

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

#### DISCUSSION

Our staff determined that AmericanFone was providing intrastate interexchange telecommunications service without first

obtaining a certificate of public convenience and necessity from us, in apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. Subsequently, the company was sent a certified letter and a facsimile of its certified letter. Our staff also attempted to contact the company via telephone call. AmericanFone failed to reply to our staff's inquiries regarding the company's certification and a customer complaint within fifteen days in apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. Hence, staff opened this docket to address AmericanFone's apparent rule violations.

After this docket was opened, Counsel for AmericanFone contacted our staff and agreed to file a settlement offer to resolve the apparent rule violations. AmericanFone's Counsel explained that AmericanFone is the parent company of FreedomStarr Communications, Inc. (FreedomStarr) which does have an IXC certificate. We had granted FreedomStarr Certificate No. 7422 on May 10, 2002, in Docket No. 991961-TI. Nevertheless, the company did not list its certificated name on bills sent to its customer as required by Rule 25-24.490, Florida Administrative Code, Customer Relations; Rules Incorporated, section 25-4.110(14), nor did it appear that the company was providing interexchange service in Florida under its certificated entity FreedomStarr.

To resolve the apparent violation of Rule Nos. 25-4.043 and 25-24.470, Florida Administrative Code, AmericanFone proposed to do the following:

- Make a voluntary contribution to the State General Revenue Fund in the amount of \$5,000 - \$2,500 for each apparent rule violation.
- Properly register the names under which it will do business in Florida as fictitious names with the Florida Department of State, and include them as doing-business-as names on its FreedomStarr certificate.
- Provide and bill for its services under the names: Planet Earth Communications, iphonebill.com, USPhone, and AmericanFone.

- Establish procedures to handle all Florida customer complaints in accordance with Commission rules and appoint specific personnel to respond to customer and governmental agency inquiries.

The monetary amount of AmericanFone's settlement proposal is consistent with other settlement proposals we have accepted in previous dockets for the same rules violations. In addition, in Docket No. 020929-TI, the company submitted a request to change the name on IXC Certificate No. 7422 to include the doing-business-as names for which it will bill and provide services. Therefore, AmericanFone has taken the necessary actions to correct the problems causing the apparent rule violations.

Accordingly, we accept the settlement offer proposed by AmericanFone, LLC to contribute \$2,500 for each apparent rule violation, for a total of \$5,000, to the State General Revenue Fund to resolve the apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. If the Proposed Agency Action Order is not protested, the contribution must be received by us within fourteen calendar days from the issuance date of the Consummating Order finalizing the Order, and should identify the docket number and company name. The contribution shall be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund. If the contribution is not received within fourteen calendar days after the issuance of the Consummating Order, Certificate No. 7422 shall be cancelled. If Certificate No. 7422 is cancelled, the company shall be required to immediately cease and desist providing interexchange telecommunications services in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement offer by AmericanFone, LLC, detailed in the body of this Order, is hereby approved. It is further

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ORDERED that if the contribution is not received within fourteen calendar days after the issuance of the Consummating Order, Certificate No. 7422 shall be cancelled. If Certificate No. 7422 is cancelled, the company shall be required to immediately cease and desist providing interexchange telecommunications services in Florida.

ORDERED that the provisions of this Order, issued as proposed agency action, 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 in the event this Order becomes final, this docket shall be closed administratively upon either receipt of the company's monetary contribution and compliance with the terms of the settlement offer, or upon cancellation of Certificate No. 7422.

By ORDER of the Florida Public Service Commission this 21st Day of October, 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 )

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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 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 Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 11, 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.