

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 020666-TI
ORDER NO. PSC-02-1612-PAA-TI
ISSUED: November 20, 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 DECLINING TO ASSESS COSTS

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.

We are vested with jurisdiction over this matter pursuant to
Sections 364.336, 364.337, and 364.285, Florida Statutes.

Between December 1, 2001, and March 15, 2002, our staff
investigated several prepaid calling cards sold by Sky Telecom,
Inc. (Sky Telecom). As a result of that investigation, it appeared
that Sky Telecom was selling prepaid calling services (PPCS) to the
Florida public without first obtaining a certificate of public
convenience and necessity (certificate) from this Commission. Sky
Telecom apparently contracted with underlying carriers to purchase

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PPCS in the form of PIN (personal identification number) accounts and subsequently encoded those PIN account numbers along with a toll-free access number on its own private label calling cards, and then sold those cards to other distributors and retailers. In addition, it appeared that Sky Telecom was selling PPCS to Florida consumers in the form of "virtual" PIN accounts through its website, www.thephonecards.com. Virtual PIN accounts are the PIN numbers that would normally be encoded on the back of a prepaid phone card, but, in this case, just the PIN numbers were sold. On March 21, 2002, we sent a certified letter via U.S. Postal Service to Sky Telecom advising the company that it appears the PPCS provided by Sky Telecom requires a certificate. On April 4, 2002, Sky Telecom submitted its reply, indicating that it has discontinued doing business with the companies providing the underlying services for the prepaid calling cards included in our investigation, but it did not address the apparent requirement for a certificate. Sky Telecom was informed that its reply did not address all of the issues in our inquiry and reiterated that the company is reselling PPCS in Florida and should file an application to obtain a certificate.

On April 29, 2002, our staff received a telephone call from Mr. Tino Patel, CEO of Sky Telecom. Mr. Patel stated that his company would apply for a certificate and requested that we send him the application form via facsimile. Mr. Patel also stated that Mr. Brian would be handling the application process. This was done, but subsequently Mr. Brian called and requested that the application be sent to him via U.S. Mail. On May 2, 2002, Sky Telecom was provided an IXC certificate application package via U.S. Postal Service certified mail.

On June 19, 2002, our staff sent an email to Mr. Tino Patel at Sky Telecom informing him that the company's application had not been received by the Commission. On July 9, 2002, after the company failed to submit its application for a certificate as agreed, this docket was opened to address Sky Telecom's apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required.

On August 12, 2002, we received an email from Mr. Tino Patel stating that Sky Telecom is not a carrier, just a distributor, and he would like an opportunity to convince us of this fact. On

September 6, 2002, we received a letter from Sky Telecom, dated September 1, 2002, explaining that the company is solely a distributor of prepaid calling cards and is not providing PPCS in Florida.

The letter explained the following:

- Sky Telecom purchases phone cards from other companies at a discounted price and resells them to retailers and other distributors.
- A failure to communicate between company personnel and incorrect advice from the company's administration resulted in Sky Telecom's initial agreement to obtain a certificate.
- Sky Telecom does not use its own name in any reference associated with the service provider on the phone cards it sells. *(The company previously listed the service provider as, "services under contract to Sky Telecom.")*
- The name, Sky Telecom, Inc., was dissolved in late 1999 to resolve a conflict with a similar name of another company. *(The company is now known as TPC or The Phonocard Warehouse, Inc.)*
- The website, www.buyaphonecard.com, is an internet link on Sky Telecom's website to a company based in Houston, Texas. *(The company does not provide its own virtual PIN accounts; only a link to another company.)*
- The carriers Sky Telecom uses approve all the phone cards and the rates on the cards, and the carriers control the switches and routes. *(Inferring that Sky Telecom does not own or lease any telecommunications facilities.)*

In addition, Sky Telecom provided us with 79 prepaid calling cards it currently sells and distributes. We reviewed those cards and confirmed that they all list legitimate service providers. Further, our staff has not found any calling cards currently sold by Sky Telecom in which the service providers listed on the card repudiate responsibility for the service.

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We believe that Sky Telecom may have been reselling PPCS prior to our staff's investigation, but has since ceased reselling those services in a manner which requires a certificate. At this time, it appears that Sky Telecom is not providing PPCS in Florida and should not be required to obtain a certificate, nor should we impose a penalty for failing to obtain a certificate. In short, Sky Telecom has chosen to resolve this issue by discontinuing the business practices that require certification.

We further believe that Mr. Patel is now fully cognizant of this Commission's rules regarding PPCS, and should he decide to alter his business practices such that his company becomes a telecommunications service provider, Mr. Patel should file an application for a certificate.

Accordingly, we find that this Commission should not impose a monetary penalty on Sky Telecom, Inc. for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that no monetary penalty will be imposed on Sky Telecom, Inc. for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. It is further

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.

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By ORDER of the Florida Public Service Commission this 20th
day of November, 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

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the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 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.