

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 940719-TC
proceedings against VOCAL) ORDER NO. PSC-94-1184-FOF-TC
MOTION, INC. for violation of) ISSUED: September 28, 1994
Rule 25-24.510, F.A.C.,)
Certificate of Public)
Convenience and Necessity)
Required, and Commission Order)
24101.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER TO SHOW CAUSE

BY THE COMMISSION:

I. BACKGROUND

On May 2, 1994, a complaint was filed against LDDS Communications regarding billing in excess of the Commission approved rate cap. After correspondence with LDDS Communications, it was found that LDDS Communications was billing on behalf of Vocal Motion, Inc. (Vocal Motion), a cellular pay telephone provider. On June 7, 1994, a letter was sent to Vocal Motion regarding billing in excess of the Commission approved rate cap and its activities as an uncertificated pay telephone provider. On June 22, 1994, Vocal Motion responded and stated that certification was not required by this Commission.

This docket was opened to consider whether Vocal Motion should be required to show cause why it should not be fined for:

- (1) violation of Rule 25-24.510, Florida Administrative Code;
- (2) charging in excess of the Commission established rate cap in violation of Order 24101; and

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(3) violation of Rule 25-24.630 (1)(d), Florida Administrative Code.

Each violation is discussed separately below.

II. VIOLATIONS

A. CERTIFICATION

It appears Vocal Motion is in violation of Rule 25-24.510, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. According to the customer complaint, Vocal Motion was providing cellular pay telephone service in Deland in March, 1994. The customer made an intrastate call and was billed in excess of the Commission-approved rate cap. It appears that Vocal Motion is operating as a pay telephone company. Pursuant to Section 364.3375, Florida Statutes, we have jurisdiction over pay telephone service in Florida. Rule 25-24.510, Florida Administrative Code, states, in pertinent part,

"No person shall provide pay telephone service without first obtaining a certificate of public convenience and necessity from the Commission."

By letter dated June 7, 1994, our staff questioned Vocal Motion about these activities. Vocal Motion responded that it was not required to obtain a certificate for its cellular pay telephone operation.

Although Vocal Motion denies it needs to have a certificate, it has applied in the past. In August, 1992, we issued Order No. PSC-92-0815-FOF-TC, which denied Vocal Motion's application for a certificate because it would not allow access to all interexchange carriers. Vocal Motion submitted the first application in response to inquiries from this Commission and continued to operate even after the certificate was denied.

We have defined pay telephone service as the sale of the use of an instrument to the casual transient public where the instrument is not dedicated to the exclusive use of a specific individual. See Order 25264. Under our definition, the technological nature of the pay telephone does not render it immune from our jurisdiction. To allow pay telephone companies to avoid the requirements of Section 364.3375 would allow companies to choose whether or not to submit to our jurisdiction and make optional a statute designed to protect the public. This cannot be the Legislature's intent.

B. CHARGING IN EXCESS OF THE RATE CAP

It appears Vocal Motion is charging in excess of the rate cap as set out in Order 24101. The customer complaint indicates Vocal Motion billed \$9.65 for a 4 minute call from Deland to Ocala, which exceeds the approved AT&T intrastate interLATA rates for pay telephone service. If the appropriate rate had been applied the maximum charge would have been \$2.10.

C. BILLING REQUIREMENTS

Vocal Motion is in apparent violation of Rule 25-24.630 (1)(d), Florida Administrative Code, Rates and Billing Requirements, which requires a company to indicate the origination and termination of each call on the telephone bill. The customer complaint indicates a call was originated from Deland and terminated in Ocala. However, the bill indicates the call originated from Talladega, Alabama and terminated in Ocala, Florida. This is an apparent violation of Commission Rule 25-24.630 (1)(d) which states in pertinent part:

An operator service provider shall require all calls to be individually identified on each bill from a telecommunications company to an end-user bill, including the date and start time of the call, call duration, origin and destination (by city or exchange name and telephone number), and type of call.

Vocal Motion indicates that its cellular pay telephones were on roam from Alabama at the time of the call from the Volusia County Fairgrounds. A call that is originated and terminated in Florida is considered a intrastate call and should be described and charged accordingly on the consumer's bill. Vocal Motion was apparently acting as the operator service provider for the call. If Vocal Motion performed the operator service provider portion, then Rule 25-24.630 (1)(d) applies to Vocal Motion as an operator service provider.

III. CONCLUSION

As discussed in Section II above, Vocal Motion is in apparent violation of several of our rules. Accordingly, we find it appropriate that Vocal Motion show cause, in writing, why it should not be fined for violation of Rules 25-24.510 and 25-24.630(1)(d), Florida Administrative Code, and for charging in excess of the approved rate cap. Vocal Motion must also show cause, in writing,

why it should not be required to refund all overcharged intrastate calls and submit monthly reports on the status of the refund. Vocal Motion's response must contain specific allegations of facts and law. If Vocal Motion fails to respond in a timely manner, such failure shall constitute an admission of the alleged violations and the waiver of any right to a hearing.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Vocal Motion, Inc. shall show cause, in writing, why it should not be fined for violations of Rules 25-24.510 and 25-24.630(1)(d), Florida Administrative Code, and for charging rates in excess of the approved rate cap. It is further

ORDERED that Vocal Motion, Inc. shall show cause, in writing, why it should not be required to refund all overcharged intrastate calls and submit monthly reports on the status of the refund. It is further

ORDERED that Vocal Motion's response must contain specific allegations of fact and law. It is further

ORDERED that, should Vocal Motion, Inc. fail to file an appropriate written response by the date set forth in the Notice of Further Proceedings or Judicial Review, such failure shall constitute an admission of the alleged violations, and a waiver of any right to a hearing. It is further

ORDERED that this docket shall remain open pending resolution of the show cause process.

By ORDER of the Florida Public Service Commission, this 28th day of September, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

LMB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 18, 1994.

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 pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(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.