

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of Show Cause) DOCKET NO. 961479-TI
Proceedings against Phone Calls,) ORDER NO. PSC-97-0124-FOF-TI
Inc. for violation of Rules 25-) ISSUED: February 4, 1997
4.043, F.A.C., Response to)
Commission Staff Inquiries, 25-)
4.118, F.A.C., Interexchange)
Carrier Selection, and 25-)
24.472, F.A.C., Improper Use of)
a Certificate.)

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE

BY THE COMMISSION:

By Order No. PSC-96-0637-FOF-TI, issued May 10, 1996, we approved the assignment of Certificate No. 3543 from Long Distance Services, Inc., (LDSI) to Phone Calls, Inc. (Phone Calls), a switchless reseller, effective June 1, 1996. LDSI and Phone Calls are essentially the same company. The sole shareholder, director, and officer of both companies transferred all stock and the certificate of LDSI to Phone Calls in order to avoid confusion with other entities having names similar to Long Distance Services. Long Distance Services, Inc. was originally certificated on April 19, 1994.

Since its original certification in April, 1994, our Division of Consumer Affairs has received a total of 430 slamming complaints against the company. In the past year, Phone Calls has stopped responding to our staff's inquiries.

Rule 25-24.480(1)(a), F. A. C., incorporates Rule 25-4.043, F. A. C., and states that:

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.

DOCUMENT NUMBER-DATE
01263 FEB-45
FPSC-RECORDS/REPORTING

Our staff made numerous unsuccessful attempts to get Phone Calls, Inc. to adequately respond to inquiries. Our staff sent the company a certified letter on July 25, 1996, that was signed for on July 31, 1996. In that letter, Phone Calls was asked to respond to a consumer complaint logged on March 22, 1996. The company was also contacted by telephone and inquiries were faxed to the company in an attempt to get Phone Calls to respond. To date, the company has not responded.

Each time a consumer files a complaint, the complaint is entered into our computerized complaint tracking system. A form that lists the details of the complaint is then mailed or faxed to the company. We ask the company to respond by sending us a report outlining what its records show happened on each individual case. Initially, Phone Calls, Inc. provided responses to the complaints, though the responses were inadequate. Specifically, Phone Calls's responses contained no explanation of various dates and batch numbers set forth in its report. Also, the company never provided copies of the letters of authorization (LOAs) it promised to provide, nor did it describe the steps taken to resolve the complaints. Most recently, however, correspondence sent to Phone Calls, Inc., has been returned stamped "Moved, Left No Address." As such, we find that Phone Calls, Inc. has violated Rule 25-4.043, F. A. C.

Rule 25-4.118, F. A. C., states, in pertinent part:

(1) The primary interexchange company (PIC) of a customer shall not be changed without the customer's authorization.

(3)(a) The ballot or letter submitted to the interexchange company requesting a PIC change shall include, but not be limited to, the following information (each shall be separately stated):

1. Customer name, phone/account number and address;
2. Company and the service to which the customer wishes to subscribe;
3. Statement that the person requesting the change is authorized to request the PIC change; and
4. Customer signature.

(3)(b) Every written document by means of which a customer can request a PIC change shall clearly identify the certificated telecommunications company to which the service is being changed, whether or not that company uses the facilities of another carrier. The page of the document containing the customer's signature shall contain a statement that the customer's signature or endorsement on the document will result in a change of the customer's long distance service provider, and explain that only one long distance service provider may be designated for the telephone number listed; that the customer's selection will apply only to that number, and that the customer's local exchange company may charge a fee to switch service providers. Such statement shall be clearly legible and printed in type at least as large as any other text on the page. If any such document is not used solely for the purpose of requesting a PIC change, then the document as a whole must not be misleading or deceptive. For purposes of this rule, the terms "misleading or deceptive" mean that, because of the style, format or content of the document, it would not be readily apparent to the person signing the document that the purpose of the signature was to authorize a PIC change, or it would be unclear to the customer who the new long distance service provider would be; that the customer's selection would apply only to the number listed and there could only be one long distance service provider for that number; or that the customer's local exchange company might charge a fee to switch service providers. If any part of the document is written in a language other than English, then the document must contain all relevant information in the same language.

We have been provided copies of two different LOAs used by Phone Calls at displays in the Tallahassee area. The sign on these displays implies that by registering, one can win a vehicle or \$20,000. The registration form is, in fact, an LOA. The displays indicate that as a bonus, customers can "save up to 30% on long distance calling card calls." In much smaller type the sign states that the customer can also "receive high-quality 1+ service!" The displays, which are in a much larger print than the LOA, do not state that the main purpose of the "registration" is to change a customer's long distance carrier. In fact, a specific long distance carrier is not mentioned on the display or the LOA. In addition, in much smaller type are printed the words "This is not a contest or sweepstakes." We note that blank LOAs were stacked up against the sign obstructing the view of the phrase "This is not a contest or sweepstakes." This practice violates Rule 25-4.118,

F. A. C.

One of our greatest concerns, however, relates to the evidence that Phone Calls altered LOAs. For example, one consumer informed us that she had filled out a form at a home show in Miami for a chance to win an automobile. The consumer stated that the form she signed stated at the top, "I wish to know more about 800 dialing services." The form also stated that "We may notify you at the home phone number above or by mail." The consumer provided us with a copy of the signed LOA the company had sent to her, and noted that the form had apparently been altered.

We have also received other evidence that Phone Calls has altered LOAs. One consumer informed us that she is 60 years old; however, the copy of the LOA she received from Phone Calls indicates that she is 23. Furthermore, portions of the LOA are misaligned, further supporting the customer's claim that the form was altered. Yet another consumer provided us with an LOA to which, the consumer states, the top and bottom were added after she had signed the form.

In addition to the numerous slamming complaints, several consumers stated that they were billed a monthly recurring charge of \$5.97 for discount calling cards. These customers asserted that not only did they not request a calling card, they had never received the calling card.

Finally, we are concerned that Phone Calls, Inc. is either sharing its certificate with an uncertificated carrier or it is using a name other than that which appears on its certificate and has failed to notify us. On August 2, 1996, we notified Sprint that a customer had complained that his long distance carrier had been switched without authorization. Sprint responded on August 7, 1996, that Charity Long Distance had authorized the switch. Sprint informed us that Charity Long Distance had advised Sprint that its IXC Certificate Number was 3543. That certificate number, however, belongs to Phone Calls. This information indicates that Phone Calls, Inc. is misusing its certificate in violation of Rule 25-24.472, F. A. C.

Based on the foregoing, we find that Phone Calls, Inc. shall be required to show cause why it should not be fined up to \$25,000 per day pursuant to Section 364.285, F. S., or have its certificate cancelled for violations of Rule 25-4.043, F. A. C., Response to Commission Staff Inquiries, Rule 25-4.118, F. A. C., Interexchange Carrier Selection, and Rule 25-24.472, F. A. C., Improper Use of a Certificate.

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Furthermore, the company has not credited the accounts of all customers who complained that their interexchange carrier had been switched. Since Phone Calls, Inc. is no longer responding at all to inquiries, we cannot be sure exactly how many of the 430 consumers who filed complaints were rerated and switched back to their preferred carrier. We, therefore, order Phone Calls, Inc. to rerate all long distance calls resulting from unauthorized PIC changes and switch the customers back to their preferred carrier at no cost to the customers, in accordance with Rule 25-4.118(5), F. A. C.

It is, therefore,

ORDERED by the Florida Public Service Commission that Phone Calls, Inc. shall show cause in writing why it should not be fined or have its certificate cancelled for Rule violations as described in the body of this Order. It is further

ORDERED that Phone Calls, Inc. shall rerate all long distance calls resulting from unauthorized PIC changes and switch the customers back to their preferred carrier at no cost to the customers in accordance with Rule 25-4.118(5), F. A. C. It is further

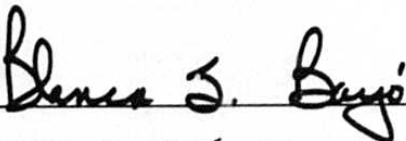
ORDERED that Phone Calls, Inc.'s response shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order in the manner and by the date set forth in the Notice of Further Proceedings or Judicial Review section of this Order shall constitute an admission of the violations described in the body of this Order, and waiver of the right to a hearing. It is further

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ORDERED that this docket shall remain open pending resolution of this proceeding.

By ORDER of the Florida Public Service Commission, this 4th day of February, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 24, 1997.

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.