

of March 12, 1997, we had received 268 complaints in all against the company.

On March 12, 1997, ITS proposed a resolution to this matter. In its proposal, ITS explains that some of the complaints are from customers who were sold service prior to telemarketing changes ITS made on becoming aware of the problem. Others are from former customers who have canceled their service with ITS or customers who still owe for the traffic they have used and have complained after referral for collection. ITS also states that it has suspended telemarketing in Florida effective January 28, 1997, until this matter is resolved. In addition, ITS proposes to pay \$10,800 in settlement.

SETTLEMENT PROPOSAL

Rule 25-24.490, Florida Administrative Code, incorporates Rule 25-4.118, Florida Administrative Code, making it applicable to interexchange companies. Rule 25-4.118(1), Florida Administrative Code, provides that "the primary interexchange company (PIC) of a customer shall not be changed without the customer's authorization." ITS has not demonstrated to our satisfaction that it has put in place corrective measures to prevent continuing violations of this rule. We find that ITS has not provided sufficient information regarding its plans for addressing current complaints and reducing the number of complaints arising in the future. ITS merely states it has "implemented more efficient complaint response policies." Neither has ITS advised us of the corrective measures it will take to ensure that telemarketing and verification procedures clearly indicate that the purpose of the initial telephone call is to solicit the consumers' long distance service. ITS states only that it has a completely new script and new verification company.

Rule 25-4.111(1), Florida Administrative Code, provides that "[e]ach telephone utility shall make a full and prompt investigation of all complaints ... and respond to the initiating party within fifteen (15) days." ITS has not demonstrated the ability to provide timely responses to consumer complaints or to Commission inquiries. ITS has not established a consistent policy of issuing credits and refunds to consumers. Neither has ITS demonstrated that it will re-rate customer bills to the rates of the customer's preferred carrier if lower, and refund or credit PIC change fees, as required by Rule 25-4.118(5), Florida Administrative Code. Furthermore, ITS has not provided us with a specific date for resolving existing complaints. Finally, ITS has

not provided us with a copy of the current script used for telemarketing and the procedures in place for verification.

For these reasons, we find it appropriate to reject ITS's proposed settlement.

SHOW CAUSE

The Division of Consumer Affairs logged the first complaint against ITS on June 13, 1996, two weeks after its certificate became effective. As we have noted above, as of March 12, 1997, we had received 268 complaints in all against ITS, and as of January 31, 1997, the Division of Consumer Affairs had closed a total of 191 "slamming" complaints against ITS as rule infractions.

Rule 25-4.118, Florida Administrative Code, provides further that:

(5) Charges for unauthorized PIC changes and higher usage rate, if any, over the rates of the preferred company shall be credited to the customer by the IXC responsible for the error within 45 days of notification.

(6) The IXC shall provide the following disclosures when soliciting a change in service from a customer:

- (a) Identification of the IXC;
- (b) That the purpose of visit or call is to solicit a change of the PIC of the customer;
- (c) That the PIC cannot be changed unless the customer authorizes the change.

Despite the requirements of Rule 25-4.118(6), Florida Administrative Code, ITS's solicitations have been deceptive. Most of the complaining consumers believed they were speaking with AT&T representatives and that they were being offered an opportunity to change to another AT&T program to save money. They did not know that their long distance service would be converted to another carrier. In most cases, the customers have stated that ITS did not disclose to them that the purpose of the call was to solicit a PIC change.

Furthermore, as we have found above, ITS has no consistent policy for re-rating charges, if higher, to those of the customers' preferred carrier, as required by Rule 25-4.118(5), Florida Administrative Code. Not all of the customer usage charges were re-rated or credited to the customers' accounts. In some cases, the customers re-rated the bill themselves and submitted the resulting amount. In other cases, ITS issued a full credit. In others, ITS issued a credit only for service charges. In still others, customers refused to pay the bills.

ITS claims that it is a reseller of the AT&T Software Defined Network. The company uses third party verification and a welcome package. The letter enclosed in the welcome package states, "Thank you for the opportunity to provide your long distance phone services ... exclusively utilizing the AT&T Network." The letter is worded so that it appears that the customer authorized a savings plan using AT&T's network. In reality, the customer's service was switched to ITS, which merely uses the AT&T network.

In addition, ITS has responded late 95 per cent of the time to staff inquiries related to the complaints. Rule 25-4.043, Florida Administrative Code, 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."

By Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful Commission rule or order, or any provision of Chapter 364, Florida Statutes. Utilities are charged with knowledge of our rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as ITS's conduct at issue here, would meet the standard for a "willful violation."

We find that ITS's apparent conduct in switching PICs without customer authorization and failing to timely respond to staff inquiries has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the

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rule, we 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."

Accordingly, we find that ITS's apparent violations of Rule 25-4.118, Florida Administrative Code, and Rule 25-4.043, Florida Administrative Code, rise to a level warranting that a show cause order be issued. Therefore, we order ITS to show cause in writing within 20 days of this Order why it should not be fined in the amount of \$75,000 for apparent violations of Rule 25-4.118, Florida Administrative Code, and \$25,000 for apparent violations of Rule 25-4.043, Florida Administrative Code, or have its certificate canceled, or both. Pursuant to Section 364.285, Florida Statutes, any payment of fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund.

We note that we expect that our order to show cause in this instance will help to assure that all Florida consumers will be protected in greater measure from "slamming."

This docket shall remain open pending resolution of this order to show cause and of any timely protest of the portion of this order rejecting ITS's settlement offer.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that Integrated TeleServices, Inc.'s settlement offer is rejected. It is further

ORDERED that Integrated TeleServices, Inc., shall show cause in writing why it should not be fined \$75,000 for violation of Rule 25-4.118, Florida Administrative Code, and \$25,000 for violation of Rule 25-4.043, Florida Administrative Code, or have its certificate canceled, or both. It is further

ORDERED that any response to the order to show cause filed by Integrated TeleServices, Inc., shall contain specific allegations of fact and law. It is further

ORDERED that any response to the order to show cause shall be filed with the Director of the Division of Records and Reporting within 20 days of this Order. It is further

ORDERED that upon receipt of Integrated TeleServices, Inc.'s response to the order to show cause, and upon its request for a hearing, further proceedings will be scheduled by the Commission,

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at which time Integrated TeleServices, Inc., will have an opportunity to contest the allegations in the body of this Order. It is further

ORDERED that if Integrated TeleServices, Inc., fails to file a timely response to the order to show cause, such failure shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that any payment of fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. It is further

ORDERED that the provision of this Order issued as proposed agency action shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall remain open pending resolution of the order to show cause.

By ORDER of the Florida Public Service Commission, this 5th day of May, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay J. [Signature]
Chief, Bureau of Records

(S E A L)

CJP

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.

The order to show cause is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the order to show cause 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 May 27, 1997. If such a petition is filed, 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.

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 the order to show cause 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.

As identified in the body of this order, our action concerning the rejection of Integrated TeleServices Inc.'s settlement offer is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. 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 25-22.029(4), 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, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 27, 1997. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an 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. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.