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Vandiver

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

August 6, 1997

RECEIVED

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3:10
FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *CP*
DIVISION OF COMMUNICATIONS (PRUITT) *APBC m*

RE: DOCKET NO. 970870-TI - INITIATION OF SHOW CAUSE
PROCEEDING AGAINST BIZNET COMMUNICATIONS FOR 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

AGENDA: 08/18/97 - REGULAR AGENDA - ISSUE 1 - SHOW CAUSE -
ISSUE 2 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\970870.RCM

CASE BACKGROUND

On February 19, 1997, staff of the Division of Communications received from the Office of State Attorney, First Judicial Circuit of Florida, an information packet concerning prepaid debit cards distributed by a company in Pensacola, Florida, 1st Choice Telecom (1st Choice). Staff sent 1st Choice a letter inquiring about the company's role in the prepaid debit card business and to ascertain the service provider for the cards. On March 21, 1997, staff received a response from 1st Choice indicating that BizNet Communications (BizNet) was the 800 service provider for the cards.

Staff sent a letter of inquiry to BizNet on March 24, 1997, requesting a response by April 8, 1997. Staff did not receive a response by the due date. On April 9, 1997, staff sent a certified letter requesting a response by April 29, 1997. On April 23, 1997, staff received two complaints about the BizNet cards not working. One customer faxed a copy of the prepaid debit card. (Attachment A,

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page 6) Staff called the company on April 23, and spoke to the President, Seth Fargen. Mr. Fargen said that BizNet disconnected the service due to outstanding bills. He also indicated that BizNet was no longer soliciting prepaid debit cards, but acknowledged that there were still cards in circulation. Staff informed Mr. Fargen that his company, as the service provider, was responsible for the consumer complaints due to the lack of service provided through the cards, and that his company needed to be certificated in Florida as an interexchange telecommunications provider.

On April 25, 1997, the certified letter was returned marked, "no forward order on file, unable to forward, return to sender." Staff called the BizNet number on file and the person who answered gave staff BizNet's new office mailing address. On April 28, 1997, staff sent a certified letter and application to the new address. The letter requested a resolution of the complaints by May 13, 1997, and the completed application returned to the Commission by May 28, 1997. (Attachment B, pages 7 - 8)

Staff received a response to its first letter of inquiry on April 29, 1997. The response included a statement from Mr. Fargen that BizNet stopped soliciting prepaid debit cards in November 1996, and a request that future correspondence be directed to its regulatory consultant. Staff received verification from the post office that the application packet and certified letter of April 28, 1997, were received on April 30, 1997. (Attachment C, page 9)

On June 12, 1997, staff called BizNet's regulatory consultant's office and left a message requesting the application. On June 13 the consultant left a message to contact BizNet at a new number. Staff called the new number, which was answered by a recording stating, "Phone Card Associates." Staff left a message requesting that the application and a resolution to the complaints be returned. On July 10, 1997, staff called BizNet and received a recording that the service was disconnected. Staff then called BizNet's fax line which was answered by a recording as "BizNet." Staff left a message requesting a return call. BizNet has not responded.

As of July 23, 1997, the 800 access number listed on the cards gave the following recording, "We're sorry, the 800 number you have dialed is not currently active." The 800 customer service number on the cards also had a recording, "As you are probably aware, our switch is still being upgraded. We apologize for any inconvenience. Your prepaid cards will be honored as soon as the switch is up. Thank you so much for your patience. Thank you for calling. Good bye."

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BizNet has been unresponsive to staff's requests to resolve consumer complaints concerning unusable prepaid debit cards and to file an application for certification as an interexchange telecommunications service provider. Therefore, we believe the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order BizNet to show cause in writing within 20 days of the issuance of the order why a fine of \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and \$10,000 for violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, should not be assessed?

RECOMMENDATION: Yes. If the fine is paid it will be forwarded to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (PRUITT)

STAFF ANALYSIS: Rule 25-24.470, Florida Administrative Code, states in part:

No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payments for services be collected, until the effective date of a certificate, if granted.

BizNet is listed as the service provider on the copy of the prepaid debit card staff received. Therefore, it appears that BizNet has violated Rule 25-24.470, Florida Statutes, by offering telecommunications service without certification.

Staff sent BizNet a certified letter on April 28, 1997, informing the company that it needed to be certificated. In that letter, staff also requested that the company resolve the complaints by May 13, 1997, and submit an application for certification by May 28, 1997. To date staff has not received a response. Rule 25-4.043, Florida Administrative Code, Response to

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Commission Staff Inquiries, states "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."

Accordingly staff believes there is sufficient cause to order BizNet to show cause why it should not be fined \$25,000 for operating without a certificate, and \$10,000 for failure to respond to staff inquiries.

ISSUE 2: Should the Commission order all certificated interexchange companies (IXCs) to discontinue providing interexchange telecommunications service to BizNet pursuant to Rule 25-24.4701(3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited?

RECOMMENDATION: Yes. Pursuant to Rule 25-24.4701(3), Florida Administrative Code, the Commission should order all certificated interexchange companies to discontinue interexchange telecommunications service to BizNet. It appears that BizNet has been providing interexchange telecommunications services without certification. The order should state that any IXC providing service to the company must contact the Commission at the conclusion of the show cause response period to determine if the show cause proceeding has concluded and if service should be discontinued. (PRUITT)

STAFF ANALYSIS: Rule 25-24.4701(3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited, states:

(3) The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such

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customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

It appears that BizNet may be operating in Florida without a certificate. Accordingly, staff recommends that the Commission order all certificated IXCs to discontinue providing intrastate long distance service for resale to this company at the conclusion of the show cause proceeding. The order should state that any IXC providing service to the company must contact the Commission at the conclusion of the show cause proceeding to determine whether service should be discontinued.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If BizNet does not respond, in writing, to the allegations set forth in the show cause order within 20 days of the issuance of the order and if no protest is filed to the Commission's Proposed Agency Action decision in Issue 2, the fines should be assessed, and this docket should be closed. After reasonable collection efforts have been made, the fine should be forwarded to the Comptroller's office for collection. (PELLEGRINI)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, BizNet should be ordered to respond within 20 days of the Commission's show cause order. If BizNet fails to respond to the show cause order, and no protest is filed to the Commission's Proposed Agency Action decision in Issue 2, the fines should be assessed, and this docket closed. If the fine is not paid after reasonable collection efforts, the matter should be referred to the Office of the Comptroller.

From: Nancy Pruitt - Public Svc. Comm.
I'll forward a copy of the other and
as soon as I have it.
If you need to call me my number is - 908-237-9021
Rachel Freeman

Thank you!

Classic Cartoon Collectors Series

Instructions

1. Dial 800 number 1-888-516-8062
2. At the prompt, enter authorization no. 985-523-6158
3. For U.S. calls dial 1+ Area Code + Number.
4. For international, dial 011, country code, city code and number.
5. To make another call, press #
6. For customer service call: 1-800-695-2638

This card is non-refundable and expires 12 months from the date of issuance.

Service provided by Global Communications.
1st Choice Telecommunications - Ft. Lauderdale, FL 33304 Designed by - Donald Flynn
© United Features Syndicate, Inc. Lot # 31 Page # 45

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



DIVISION OF COMMUNICATIONS
WALTER D'HAESELEER
DIRECTOR
(904) 413-6600

Public Service Commission

April 28, 1997

CERTIFIED

Mr. Seth Fargen
BizNet Communications
9441 East 31st Street, Suite 207
Tulsa, OK 74145

Dear Mr. Fargen:

This is a follow-up to our conversation of Wednesday, April 23, 1997, in which I informed you that Chapter 364, Florida Statutes, authorizes this Commission to regulate telecommunications services in Florida.

In my letter to your company dated March 24, 1997, I stated, "While distributors of prepaid debit cards do not need a certificate from this Commission, resellers of telecommunications services do." A response to the letter was requested by April 8, 1997. Rule 25-24.470, Florida Administrative Code, states in part, "No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted."

The Division of Communications has received two complaints concerning unusable prepaid debit cards, distributed by 1st Choice Telecom in Pensacola, Florida. In our conversation you indicated that BizNet had disconnected the service to the cards because of nonpayment of bills owed by 1st Choice. As a result, end users who had purchased the cards were not able to complete calls and receive the telephone service for which they had already paid.

Please contact the following consumers concerning their unusable prepaid debit cards and provide a report on the resolution of their complaints by May 13, 1997:

Rick Spaulding, 312 Mount Vernon Road, Sylacauga, AL 35150 (205) 249-2901

Rachel Lercari, 2 Hemlock Lane, Bayville, NJ 08721 (908) 237-9021

Since your company provided the telecommunication service for the prepaid debit cards distributed by 1st Choice Telecom, it is staff's opinion that BizNet is responsible for the service or lack of service provided through the cards. As an uncertificated telecommunications company

Mr. Seth Fargen
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operating in Florida, BizNet is also in apparent violation of Florida Statutes and the rules of this Commission.

Under separate cover I am sending an application for certification as an interexchange telecommunications company. Please complete the application and return it to the Commission by May 28, 1997.

If you have any questions, please contact me at (904) 413-6127 or by fax at (904) 413-6128.

Sincerely,



Nancy Pruitt
Research Assistant
Bureau of Service Evaluation

Record #2797.2

SENDER:
 *Complete items 1 and/or 2 for additional services.
 *Complete items 3, 4a, and 4b.
 *Print your name and address on the reverse of this form so that we can return this card to you.
 *Attach this form to the front of the mailpiece, or on the back if space does not permit.
 *Write "Return Receipt Requested" on the mailpiece below the article number.
 *The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
 1. Addressee's Address
 2. Restricted Delivery
 Consult postmaster for fee.

3. Article Addressed to:
 Mr. Seth Fergen
 BizNet Communications
 9441 East 31st Street, Suite 207
 Tulsa, OK 74145
 (certified & DC)

4a. Article Number
 1234957122

4b. Service Type
 Registered Certified
 Express Mail Insured
 Return Receipt for Merchandise COD

5. Received By (Print Name)
 R22

6. Signature (Addressee or Agent)
 [Signature]

7. Date of Delivery
 4-30-97

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Services.

In your RETURN ADDRESS completed on the reverse side

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

Ms. Nancy Pruitt
 Florida Public Service Commission
 2540 Shumard Oak Blvd.
 Tallahassee, FL 32399-0850

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