

Talbott
Vandiver *WV*

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

M E M O R A N D U M

November 6, 1997

RECEIVED

NOV - 6 1997
11:52
FPSC - Records/Reporting

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

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *JMB*
DIVISION OF COMMUNICATIONS (PRUITT) *MA*

RE: DOCKET NO. 970870-TI - BIZNET COMMUNICATIONS - INITIATION OF SHOW CAUSE PROCEEDING FOR VIOLATION OF RULE 25-24.470, FLORIDA ADMINISTRATIVE CODE, CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED, AND RULE 25-4.043, FLORIDA ADMINISTRATIVE CODE, RESPONSE TO COMMISSION STAFF INQUIRIES

AGENDA: NOVEMBER 18, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEC\WP\970870R1.RCM

CASE BACKGROUND

By Order No. PSC-97-1046-PCO-TI issued September 5, 1997, the Commission ordered BizNet Communications (BizNet) to show cause why it should not be fined \$25,000 for providing telecommunications service in Florida without certification, in violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for not responding to staff inquiries in violation of Rule 25-4.043, Florida Administrative Code. The Commission further ordered that if the show cause proceeding was not resolved in favor of BizNet, all certificated interexchange companies would be required to discontinue providing intrastate long distance service for resale to BizNet at the conclusion of the proceeding.

On September 25, 1997, the Division of Records and Reporting received an apparent response from BizNet to the Commission's show cause order. The response, however, was neither signed nor dated. Attachment 1.

DOCUMENT NUMBER-DATE

11462 NOV-65

FPSC-RECORDS/REPORTING

DOCKET NO. 970870-TI
DATE: November 6, 1997

Staff believes the following recommendations are appropriate.

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DATE: November 6, 1997

DISCUSSION OF ISSUES

ISSUE 1: Should BizNet Communications be fined \$25,000 for violations of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and \$10,000 for violations of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. BizNet Communications should be fined \$25,000 for violations of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and \$10,000 for violations of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. Biznet should be required to pay the fines within five working days of the issuance of the Commission's order. Upon payment, the fines should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the fines are not paid after a reasonable collection effort, the matter should be referred to the Office of the Comptroller for collection. (PELLEGRINI, PRUITT)

STAFF ANALYSIS: On September 25, 1997, the Commission received the apparent response of BizNet to the Commission's Order No. PSC-97-1046-PCO-TI, issued September 5, 1997, directing the company to show cause why it should not be fined \$25,000 for violations of Rule 25-24.470, Florida Administrative Code, and \$10,000 for violations of Rule 25-4.043, Florida Administrative Code. Staff is troubled by the response's lack of authenticity. It is not on company letterhead, contains no address, is undated, and does not bear any company official's or any other signature.

The response alleges that BizNet does not provide intrastate interexchange telephone services in Florida and declares that, accordingly, Rule 25-24.470, Florida Administrative Code, does not apply to it. It charges that 1st Choice Telecom distributed prepaid debit cards that BizNet did not activate because 1st Choice Telecom had not paid for them, and that it is "outrageous" to hold it responsible for the "fraudulent acts of others." It denies that the company has violated Florida law.

The response further alleges that the consumers who registered complaints with the Commission did not purchase cards in Florida and did not attempt to use the cards in Florida. It contends that the Commission has no jurisdiction in this matter and that BizNet is not required to apply for certification in Florida. It states, moreover, that BizNet has responded to all of the Commission staff's written inquiries.

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In the response, BizNet did not elect to request a hearing. The response simply indicates that the company "will respond to any written request for information in a reasonable period of time." It concludes with an assertion that BizNet does not provide intrastate services in Florida and, accordingly, is not required to obtain a certificate.

In staff's view, the contention of the response that this Commission does not have jurisdiction in this matter is unacceptable. Indeed, Seth Fargen, the president of BizNet wrote a letter dated April 17, 1997, to the company's regulatory consultant, Ms. Cynthia Kott of Telecom Tariff Consultants, Inc., in which he described BizNet as "a remarketer of communications services." Attachment 2. In that letter, Mr. Fargen states that BizNet purchases the underlying 800 service from U.S. Long Distance and that customers with problems or questions initially contact BizNet. He states further that BizNet stopped soliciting prepaid debit card sales in November 1996.

In the same letter, Mr. Fargen states that BizNet "provided its own PIN numbers to various printers with whom it contracted," and that BizNet "can suspend or terminate PINS if they are not paid for." In a letter written to staff dated February 4, 1997, Mr. Alfred Brown, president of 1st Choice Telecom, states that his company purchases the cards pre-encoded with a PIN from BizNet. Attachment 3. In selling PINs for prepaid debit cards to a distributor in Florida, apparently without limitation as to use, as it did to 1st Choice Telecom, and later terminating the PINs for lack of payment, BizNet exposed itself to the sale in Florida of debit cards for which it holds itself out to the public as the service provider. This places BizNet under the jurisdiction of this Commission, regardless of the state of its relationships with distributors.

In Order No. PSC-96-124-FOF-TI, issued September 26, 1996, the Commission defined a prepaid debit card (PDC) provider as one who "buys bulk time from an underlying interexchange company and repackages and resells the time as telephone prepaid cards." The Commission ordered "that, beginning November 30, 1996, PDC providers who sell cards in Florida, who have not filed for certification, and who are in willful violation of the requirement that they be certificated as Interexchange Telecommunications Companies shall be fined not less than \$1,000." Thus, staff believes BizNet is obligated to apply in Florida for a certificate to provide resold intrastate interexchange telecommunications services.

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On April 28, 1997, staff wrote a letter to BizNet informing it that two persons had registered complaints with the Commission concerning unusable prepaid debit cards. Attachment 4. Staff asked the company to resolve the complaints and to report the results. The company has not furnished the requested report.

Staff believes the allegation in the response that BizNet had responded to all "written" inquiries to be evasive. Order No. PSC-97-1046-PCO-TI contains numerous citations of staff's frustrated efforts to communicate with BizNet concerning the need for certification and for resolution of consumer complaints. These include instances of no or unreasonably delayed responses to inquiries, the unnecessary and unusual interposition of a regulatory consultant, unreported address changes, name confusion, and out-of-service telephone numbers.

In Order No. PSC-97-1046-PCO-TI, the Commission found BizNet's violations of Rules 25-24.470 and 25-4.043, Florida Administrative Code, to be willful in the sense intended by Section 364.285, Florida Statutes. Staff does not regard BizNet's apparent response to the Commission's show cause order to be satisfactory. Thus, staff recommends that Commission impose on BizNet a fine of \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, and a fine of \$10,000 for violation of Rule 25-4.043, Florida Administrative Code. Biznet should be required to pay the fines within five working days of the issuance of the Commission's order. Upon payment, the fines should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the fines are not paid after a reasonable collection effort, the matter should be referred to the Office of the Comptroller for collection.

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ISSUE 2: Should the Commission order all certificated interexchange companies 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. (PRUITT, PELLEGRINI)

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 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.

Staff believes that BizNet has operated in Florida as a reseller of interexchange telecommunications services without a certificate. Accordingly, staff recommends that the Commission order all certificated interexchange carriers to discontinue providing intrastate long distance service for resale to BizNet.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon payment of the fines or the expiration of the five-day period in which the fines are to paid. (PELLEGRINI)

STAFF ANALYSIS: This docket should be closed if BizNet pays the fines imposed in Issue 1 or fails to pay such fines within five days of the issuance of the Commission's order.

ORIGINAL

Director, Division of Records & Reporting
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED

SEP 26 1997

Response to Order no PSC-97-1046-PCO-TI
Docket 970870-T1

CMU

In response to you allegations that BizNet has violated rules of the Public Service Commission specifically rule 25-24.470 and Rule 24-4 043 BizNet responds as follows

In response to rule 25-24 470, BizNet does not provide intrastate interchange telephone service in the State of Florida. We have absolutely no facilities, lines or equipment in the State of Florida, nor have we every had. Therefore this Rule is not even applicable to BizNet. You make a statement that BizNet is listed as the service provider on cards distributed by First Choice. We never printed any cards for First Choice. It is a common business practice in the prepaid card industry to sell PINs in large quantities so that distributors can receive better prices on their printing. It is apparent to us that First Choice sold cards that were never activated, because they were never paid for, but yet still sold these cards to consumers. It is outrageous that you are trying to hold us responsible for the fraudulent acts of others.

Furthermore it appears that the three alleged violations of this rule for which you received verbal complaints from consumers were from people who did not purchase the cards in Florida, nor did they attempt to use their cards in Florida. If you have evidence to the contrary we expect to be provided with appropriate documentation.

It is our contention that there is no jurisdiction in this matter and that BizNet is not required to file for a certificate as it is not providing the services which you allege.

In response to Rule 25-4 043 we have responded to all written inquires received by BizNet. We have never received any documentation which supports your allegations. We have not intentionally disregarded communications from your staff.

- ACK _____
- AF: _____
- APP _____
- CAF _____
- CHOICE | _____
- CTO _____
- EAT _____
- LE: | _____
- LIT: _____
- OFC _____
- PCH _____
- SEC | _____
- WAS _____
- OTH _____

Although we are sure that your staff is well intended to protect consumer rights in your state, you have produced no tangible evidence that BizNet has violated your statutes. We suggest that First Choice is the appropriate party for you to deal with as they are the ones who printed, sold and collected money for the cards in question. We too were cheated by First Choice, a fact that seems to have gotten lost in shuffle.

In summary, BizNet is not required to obtain a certificate, as it does not provide intrastate services within the State of Florida. We will respond to any written request for information in a reasonable period of time.

BizNet, Inc.
Tulsa, OK

DOCUMENT NUMBER DATE
05851 SEP 26 1997
FRED-TECH. DIV. TALLAHASSEE

TELECOM TARIFF CONSULTANTS, INC.

KOTT ENTERPRISES, INC.

408 South Andrews Avenue, Suite 107
Ft. Lauderdale, Florida 33301

P.O. Box 14062
Ft. Lauderdale, FL 33302

TEL: (954) 764-5093 FAX: (954) 764-0840

April 22, 1997

Nancy Pruitt
Florida Public Service Commission
Capital Circle Office Center
2549 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



Re: BizNet Communications
Certified Letter Sent March 24, 1997

Dear Ms. Pruitt:

On behalf of BizNet Communications I am forwarding the reply of Mr. Seth Fargen, the President of BizNet Communications.

It is important to note that BizNet is "no longer soliciting prepaid phonecard sales and has not since November 1996."

I would ask that you review these responses and direct subsequent correspondence regarding same to the undersigned regulatory consultant.

Thank you.

Respectfully,

A handwritten signature in cursive script that reads "Cynthia D. Kott".

Cynthia D. Kott

CDK:tk
encl.
cc: Seth Fargen

APR-2J-1997, 16:28 FROM

TO

19547640840 P.02

BizNet

April 17, 1997

NOTATIONS

ATTENTION: Cynthia Kott

SUBJECT: STATE OF FLORIDA PUBLIC UTILITIES COMMISSION

Dear Ms. Kott:

We have received the following inquiry from the State of Florida Public Service Commission regarding sales of prepaid calling cards in the state. In response to the specific inquiries made, we can provide the following information.

I will preface this response by stating that BizNet is no longer soliciting prepaid phonecard sales and has not since November 1996. It has always been our policy to comply fully with all governmental authorities rules and regulations.

1. 800 service is provided by U.S. Long Distance of San Antonio, Texas. They have represented to us that they are tariffed and licensed to do business in all fifty states.

2. BizNet receives a bill for calls completed on U.S. Long Distance's network

3. Customers initially call BizNet if they experience any problems or have questions about rates. If there appears to be a problem with completing calls or network difficulties, this information is called into U.S. Long Distance. BizNet does this primarily to ensure that our customers are satisfied and that services are being provided as contracted for with U.S. Long Distance.

4. BizNet provided its own PIN numbers to various printers with whom it contracted.

5. BizNet can suspend or terminate PINs if they are not paid for.

BizNet is primarily a remarketer of communications services provided by other companies. We have no facilities, offices or equipment in any state except Oklahoma. If further information is required, please let me know.

Sincerely,


Seth Fargen
President

6130 E. 32nd St., Suite 101, Tulsa, OK 74135

February 4, 1997

Kelly Bigalski
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Ms. Bigalski:

Here is the information you requested concerning our distribution of pre-paid calling cards.

1. The company that provides the 800 service used to make calls is:

BizNet Communications
6130 East 32nd Street, Suite 101
Tulsa, OK 74135
918-663-2388
800-409-2638
FAX 918-663-2376

2. We do not receive a bill for the usage of the 800 service.

3. BizNet is the company that handles customer inquiries to the customer service number. 1-800-409-2638

4. We purchase the cards pre-encoded with a personal identification number from BizNet.

5. No action by our company can result in cards previously sold being unusable.

Sincerely,

Alfred Brown
President



7100 Plantation Road • Suite 3, Pensacola, FL 32504
(904)-479-4481 FAX (904)-479-4497

Make the RIGHT choice...
...choose 1st Choice

STATE OF FLORIDA

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

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ATTACHMENT 4
PAGE 2 of 2

Mr. Seth Fargen
Page 2
April 28, 1997

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