

FLORIDA PUBLIC SERVICE COMMISSION  
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M E M O R A N D U M

December 23, 1997

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FPSC - Records/Reporting

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

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *BK*  
DIVISION OF COMMUNICATIONS (BIEGALSKI) *LB*  
DIVISION OF ADMINISTRATION (LAKE) *ML*

RE: DOCKET NO. 971317-TP - INITIATION OF SHOW CAUSE  
PROCEEDING AGAINST NATIONWIDE COMMUNICATIONS OF MICHIGAN,  
INC. FOR APPARENT VIOLATION OF RULE 25-24.630, FLORIDA  
ADMINISTRATIVE CODE, RATE AND BILLING REQUIREMENTS, RULE  
25-4.043, FLORIDA ADMINISTRATIVE CODE, RESPONSE TO  
COMMISSION STAFF INQUIRIES AND RULE 25-4.0161, FLORIDA  
ADMINISTRATIVE CODE, REGULATORY ASSESSMENT FEES

AGENDA: 01/06/98 - REGULAR AGENDA - ISSUES 1 AND 2 - SHOW  
CAUSE - ISSUE 3 - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\971317TP.RCM

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CASE BACKGROUND

Nationwide Communications of Michigan, Inc. (Nationwide), is a provider of interexchange telecommunications service, certificate number 3549, and a pay telephone service provider, certificate number 3950. Nationwide received its interexchange telecommunications certificate on April 29, 1994 and its pay telephone certificate on January 31, 1995.

On January 23, 1997, staff received a complaint regarding apparent overcharges for calling card calls made from a hotel room. On January 28, 1997, staff sent a letter to Nationwide requesting information regarding these overcharges. On February 17, 1997, staff sent a certified letter to Nationwide informing it of the failure to respond regarding the overcharges. On March 10, 1997, Nationwide informed staff the problem was due to a virus in its computer system, which corrupted the rate table data base. Staff was informed the problem had been corrected. On May 2, 1997, staff

DOCUMENT NUMBER-DATE

13154 DEC 23 97

FPSC-RECORDS/REPORTING

DOCKET NO. 971317-TP  
DATE: December 23, 1997

sent a certified letter requesting Nationwide to identify the total number of calls overcharged, the total amount subject to refund, and the time frame of the overcharges. On May 14, 1997, Nationwide responded that this information did not exist and it could not be recreated. However, staff believes Nationwide can research the bills produced and estimate the number of calls and overcharges. Therefore, on May 21, 1997, staff mailed a letter to Nationwide citing Rule 25-4.019(1), Florida Administrative Code, in regard to the requested information. Staff also attempted to contact Nationwide by telephone on July 3, 1997, and July 10, 1997, as well as Nationwide's attorney. To date, staff has not received a formal response.

In addition, Nationwide is delinquent on its regulatory assessment fees for the year 1996 on both its payphone certificate and its interexchange certificate. The Division of Administration mailed certified letters on June 3, 1997 informing Nationwide of these delinquencies. The certified letter regarding the pay telephone delinquency was signed for and received, but to date, the regulatory assessment fees, along with statutory penalties and interest, have not been received. In addition, staff has not received payment or correspondence from Nationwide concerning the delinquent interexchange regulatory assessment fees.

#### DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Nationwide Communications of Michigan, Inc. to show cause in writing why a fine of \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, in regard to its interexchange telecommunications certificate, \$250 for apparent violation of Rule 25-24.630, Florida Administrative Code, and \$1,500 for apparent violation of Rule 25-4.043, Florida Administrative Code, should not be assessed or certificate number 3549 should not be canceled?

RECOMMENDATION: Yes. The Commission should require Nationwide to show cause in writing within 20 days of the issuance of the Commission's Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, in regard to its interexchange telecommunications certificate, \$250 for apparent violation of Rule 25-24.630, Florida Administrative Code, and \$1,500 for apparent violation of Rule 25-4.043, Florida Administrative Code or certificate number 3549 should not be canceled. The company's response should contain specific disputed

DOCKET 971317-TP  
DATE: December 23, 1997

allegations of fact or law. If Nationwide fails to respond to the show cause, the fines should be deemed assessed. If the fines and regulatory assessment fees, along with statutory penalties and interest, are not paid and the required information not furnished within 5 business days after the Order becomes final, Certificate Number 3549 should be canceled. If the fines are paid, they should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (Biegalski)

**STAFF ANALYSIS:** Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

On November 14, 1997, staff learned that Nationwide had not submitted the regulatory assessment fee for the year 1996, along with statutory penalties and interest charges, for its interexchange telecommunications certificate. Therefore, the company has failed to comply with Rule 25-4.0161, Florida Administrative Code.

In addition, Nationwide has not provided a sufficient response to staff's inquiries regarding an apparent violation of Rule 25-24.630, Florida Administrative Code. This rule states, in part:

- (1) an operator services provider shall:
  - (a) charge and bill end-users no more than the Commission-approved rate for intrastate calls.

On January 23, 1997, staff received a complaint regarding an apparent overcharge for a calling card call. Staff mailed a letter to Nationwide in order to address this complaint as well as to determine the number of calls charged in excess of the rate cap, the length of time this may have occurred, and the amount, if any, subject to refund. Although the complaint has been resolved, Nationwide has failed to provide staff with the information requested. Therefore, Nationwide appears to be in violation of Rule 25-24.630, Florida Administrative Code, and Rule 25-4.043, Florida Administrative Code, requiring timely responses to staff inquiries.

Accordingly, staff recommends that the Commission order Nationwide to show cause why a \$500 fine for failure to comply with Rule 25-4.0161, Florida Administrative Code, in regard to its interexchange telecommunications certificate, \$250 for apparent violation of Rule 25-24.630, Florida Administrative Code, and \$1,500 for failure to comply with Rule 25-4.043, Florida Administrative Code, should not be assessed or certificate number 3549 should not be canceled if the fines, the regulatory assessment

DOCKET NO. 971317-TP  
DATE: December 23, 1997

fee, along with statutory penalties and interest, and requested information are not submitted within five business days after the Order becomes final.

ISSUE 2: Should the Commission order Nationwide Communications of Michigan, Inc. to show cause in writing why a fine of \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, in regard to its pay telephone certificate should not be assessed or certificate number 3950 should not be canceled?

RECOMMENDATION: Yes. The Commission should require Nationwide to show cause in writing within 20 days of the issuance of the Commission's Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, in regard to its pay telephone certificate, or certificate number 3950 should not be canceled. The company's response should contain specific disputed allegations of fact or law. If Nationwide fails to respond to the show cause, the fines should be deemed assessed. If the fines and regulatory assessment fees, along with statutory penalties and interest, are not paid within 5 business days after the Order becomes final, Certificate Number 3950 should be canceled. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (Biegalski)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

On November 14, 1997, staff learned that Nationwide had not submitted the regulatory assessment fee for the year 1996, along with statutory penalties and interest charges. Therefore, the company had failed to comply with Rule 25-4.0161, Florida Administrative Code.

Accordingly, staff recommends that the Commission order Nationwide to show cause why a \$500 fine for failure to comply with Rule 25-4.0161, Florida Administrative Code, in regard to its pay telephone certificate, should not be assessed or certificate number 3950 should not be canceled if the fine, the regulatory assessment fee, along with statutory penalties and interest, are not provided within five business days after the Order becomes final.

DOCKET NO. 971317-TP  
DATE: December 23, 1997

ISSUE 3: Should the Commission order all certificated interexchange companies (IXCs) to discontinue providing interexchange telecommunications service to Nationwide pursuant to Rule 25-24.4701(3), Florida Administrative Code, if Certificate Number 3549 is canceled?

RECOMMENDATION: Yes. Pursuant to Rule 25-24.4701(3), Florida Administrative Code, the Commission should order all certificated interexchange companies to discontinue providing interexchange telecommunications service to Nationwide if Nationwide's certificate is canceled at the conclusion of the show cause process for failure to submit the delinquent regulatory assessment fees, pay the fines, and submit the required information as required in Issue 1. The Order should state that any IXC providing service to Nationwide must contact the Commission at the conclusion of the show cause response period to determine if the show cause proceeding has been concluded. (Biegalski)

STAFF ANALYSIS: Rule 25-24.4701(3), Florida Administrative Code, states in part:

(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.

If Nationwide's Interexchange Telecommunications certificate is canceled, any intrastate interexchange service offered by Nationwide would be in violation of Rule 25-24.4701(3), Florida Administrative Code. Since the Commission cannot readily identify which IXC provides service to Nationwide, the Commission should order all certificated IXCs to discontinue service to Nationwide if Nationwide fails to comply with the terms of the Commission's order resulting from these recommendations. The Order should state that any IXC providing service to Nationwide must contact the Commission at the conclusion of the show cause response period to determine if the show cause proceeding has been concluded.

DOCKET NO. 971317-TP  
DATE: December 23, 1997

ISSUE 4: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issues 1 and 2 are approved, an Order to Show Cause will be issued. If Nationwide timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. The docket should also remain open to process any protest to Issue 3 that may be filed within 21 days of the issuance of the Order by a person whose substantial interests are affected by the Commission's Proposed Agency Action. If Nationwide does not respond to the Commission's Order to Show Cause, the fines should be assessed. If no timely protest of Issue 3 is filed, Nationwide fails to respond to the Order to Show Cause, and the fines, fees and required information are not received within five business days after the expiration of the show cause response period, Nationwide's certificates should be canceled and this docket closed administratively. (Pellegrini)

STAFF ANALYSIS: If staff's recommendation in Issues 1 and 2 are approved, an Order to Show Cause will be issued. If Nationwide timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. The docket should also remain open pending the resolution of any protest to Issue 3 that may be filed within 21 days of the issuance of the Order by a person whose substantial interests are affected by the Commission's Proposed Agency Action. If Nationwide does not respond to the Commission's Order to Show Cause, the fines should be assessed. If no timely protest of Issue 3 is filed, Nationwide fails to respond to the Order to Show Cause, and the fines, and fees, and required information are not received within five business days after the expiration of the show cause response period, Nationwide's certificates should be canceled and this docket closed administratively.