



# 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-

**DATE:** 07/09/98

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (BEDELL) *MCB for CB*  
DIVISION OF COMMUNICATIONS (YAMBOR) *[Signature]*

**RE:** DOCKET NO. 980675-TI - INITIATION OF SHOW CAUSE PROCEEDING AGAINST CENDANT MEMBERSHIP SERVICES, INC. FOR VIOLATION OF RULE 25-24.470, FLORIDA ADMINISTRATIVE CODE, CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED

**AGENDA:** 07/21/98- REGULAR AGENDA- ISSUE 1- SHOW CAUSE- ISSUES 2, 3, 4, and 5- PROPOSED AGENCY ACTION- INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** I:\PSC\CMU\WP\980675TI.RCM

### CASE BACKGROUND

On May 13, 1998, the Florida Public Service Commission received a consumer complaint (forwarded from the Attorney General's Office) regarding possible deceptive practices involving Cendant Membership Services, Inc. (CMSI).

The complaint included a copy of a check (Attachment A) for \$4.95 which when endorsed by the consumer, obligates the consumer to a \$6.99 monthly fee for a card called AutoVantage Gold which offers automobile services, various other discounts and a discounted calling card. On the back of the check, in fine print, the endorser agrees to be automatically billed on their local exchange telephone bill. Staff believes that few consumers who endorse the check realize they are obligating themselves to a \$6.99 monthly recurring charge, calling card charges at \$.30 per minute and a surcharge of \$.30 per call.

DOCUMENT ID: 980675-TI

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DOCKET NO. 980675-TI  
DATE: July 9, 1998

Staff investigated the initial complaint against AutoVantage Gold (AVG) and determined that AVG appears to be a card issued by Cendant Membership Services, Inc (CMSI). The card is issued in AVG's name. Neither CMSI nor AVG are certificated to provide telecommunications in the State of Florida. However, CMSI has requested an IXC application.

Staff is aware that Florida consumers have been accepting the free check offered by CMSI thereby subjecting themselves to billing by CMSI on local exchange telephone bills. However, at this time, no other complaints have been received. The essence of this offer enrolls a consumer into a automotive/travel club and other discount privileges. Staff believes the activities of CMSI may constitute "cramming" of unauthorized charges on local phone bills.

Staff contacted CMSI's management on 5/19/98. CMSI admitted to doing business in Florida. They also suggested they wanted to become certificated. Staff provided an application and information brochure, however, as of 7/2/98, we have not received an application.

Because it appears CMSI is providing or offering to provide telecommunications service without a certificate, by offering calling card service, we believe the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order CMSI to show cause why it should not be fined \$25,000 for apparent failure to comply with Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required?

RECOMMENDATION: Yes. CMSI appears to be providing, or offering with the intent to provide, telecommunications service without a certificate. The Commission should require CMSI to show cause in writing within 20 days of the issuance of the Commission's Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The company's response must contain specific allegations of fact or law. If CMSI fails to respond to the show cause, the fine will be deemed assessed. If the fine is not paid within five business days after the expiration of the show cause response period after reasonable collection efforts, it should be forwarded to the Office of the Comptroller for collection. If the fine is paid, it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (Yambor)

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

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. However, acquisition of equipment and facilities, advertising and other promotional activities may begin prior to the effective date of the certificate at the applicant's risk that it may not be granted. In any customer contacts or advertisements prior to certification, the applicant must advise the customer that certification has not and may never be granted.

Based upon the written documentation staff has received, and CMSI representatives' acknowledging it is offering discount calling cards in Florida, CMSI appears to be in violation of Rule 25-24.470, Florida Administrative Code, by offering telecommunications service without a certificate. Moreover, the "check" has no disclaimer that certification has not and may never be granted.

In previous dockets involving companies operating without a certificate, fines and settlements have ranged up to \$40,714. Staff believes that a fine of \$25,000 for operating without a certificate is appropriate. Therefore, since it appears that CMSI is providing telecommunications service without a certificate, staff recommends that the Commission should issue a show cause order.

**ISSUE 2:** Should CMSI be ordered to stop all billing in Florida until authorized to do so by the Commission?

**RECOMMENDATION:** Yes. Pursuant to Sections 364.01, 364.08, and 364.19, Florida Statutes, the Commission has jurisdiction over CMSI's LOA. Therefore, staff recommends that the Commission order CMSI to stop all billing in Florida until authorized to do so by the Commission and to obtain certification before the company initiates any billing of charges stemming from such LOAs in Florida. (Yambor)

**STAFF ANALYSIS:** CMSI's entry form appears to be deliberately deceptive, intending to encourage people to accept the free check while the fine print states that by doing so, telephone subscribers will incur a monthly fee of \$6.99 for automobile services whether the service is used or not. Additionally, the calling card fees supposedly offered at discount by CMSI would actually be at higher rates than those readily available from a certificated provider.

The LOA identifies CMSI as a service provider for a calling card. All customer card inquiries and disputes are through CMSI. Staff believes CMSI should be ordered to stop all billing in Florida until authorized to do so by the Commission and to obtain certification before the company initiates any billing of charges stemming from such LOAs in Florida.

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

**RECOMMENDATION:** Yes. It appears that CMSI may be operating in Florida without a certificate in violation of Rule 25-24.4701(3), Florida Administrative Code. 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 been concluded. (Yambor)

**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.

It appears that CMSI 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 will be notified at the conclusion of the show cause proceeding.

**ISSUE 4:** Should all Local Exchange Companies be ordered not to bill for CMSI until such time as CMSI is certificated?

Recommendation: Yes. (Yambor)

Staff Analysis: Because CMSI has sufficient information with each entry form to submit charges to LEC subscribers, staff believes CMSI may ultimately charge Florida subscribers based on the entry forms it has already collected. Because staff believes the entry forms are deceptive, staff recommends that LECs be ordered not to bill any customers in Florida on behalf of CMSI until such time as CMSI is certificated.

ISSUE 5: Should the Commission order CMSI to refund customers for unauthorized charges pursuant to Rule 25-4.114, Florida Administrative Code, Refunds?

RECOMMENDATION: Yes. Since CMSI has not filed tariffs with this Commission that identify the services it will provide and the prices it will charge, the Commission should order CMSI to dispense refunds, with interest, to all customers who paid the unauthorized charges, in the manner proscribed by rule 25-4.114, Florida Administrative Code. (Yambor)

STAFF ANALYSIS: Rule 25-4.114 (3), Florida Administrative Code, Refunds, states in part:

(3) Basis of Refund. However, where the refund is not related to specific rate changes, such as a refund for overearnings, the refund shall be made to customers of record as of a date specified by the Commission. Customer of record refund refers to a refund to every customer receiving service as of a date specified by the Commission.

Indications are that early in 1998, CMSI began offering customers a discounted calling card without a certificate or an established tariff. Specifically, refunds should be due on the monthly recurring charge, calling card charges, and the per call surcharge.

Therefore, staff recommends that CMSI should be ordered to refund on a per customer basis pursuant to Rule 25-4.114 (3), Florida Administrative Code, Refunds.

Rule 25-4.114 (4) (d), Florida Administrative Code, Refunds, states in part:

(4) Interest. (d) Interest multiplier. When the refund is computed for each customer, an interest multiplier may be applied against the amount of each customer's refund in lieu of a monthly calculation of the interest for each customer.

If the commission orders a per customer refund, staff recommends the Commission order interest pursuant to Rule 25-4.114 (4) (d), Florida Administrative Code, Refunds.

Rule 25-4.114 (7), Florida Administrative Code, Refunds, states in part:

(7) Refund reports. During the processing of the refund, monthly reports on the status shall be made by the 10th of the following month. In addition, a preliminary report shall be made within thirty (30) days after the date the refund is completed and again 90 days thereafter. A final report shall be made after all the administrative aspects of the refund are completed.

If the commission orders a per customer refund and interest, staff recommends the Commission order a refund report pursuant to Rule 25-4.114 (7), Florida Administrative Code, Refunds.

ISSUE 6: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, then CMSI will have 20 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed. If CMSI 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 Issues 2, 3, 4, and 5 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.

Staff recommends that if CMSI fails to respond to the Order to Show Cause, the fine should be deemed assessed. If the fine is not received within five business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection. If no timely protest of Issues 2, 3, 4 and 5 is filed and CMSI fails to respond to the Order to Show Cause, this docket may be closed administratively. (Bedell)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then CMSI will have 20 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed. If CMSI 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 Issues 2, 3, 4, and 5 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.

Staff recommends that if CMSI fails to respond to the Order to Show Cause, the fine will be deemed assessed. If the fine is not received within five business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection. If no timely protest of Issues 2, 3, 4, and 5 are filed and CMSI fails to respond to the Order to Show Cause, this docket may be closed administratively.





**PLEASE SIGN AND CASH OR DEPOSIT THIS CHECK TO ACTIVATE YOUR FREE TRIAL MEMBERSHIP.** My AutoVantage Gold membership will be automatically activated for thirty days free when the check is cashed. If, after reviewing my membership materials, I am not convinced AutoVantage Gold is for me, I can cancel within the thirty-day trial period by calling 1-800-876-7787. I will owe paid nothing and owe nothing. Otherwise, I agree that you will continue my membership and calling card privileges automatically at the end of the trial. The \$6.99 monthly membership fee, or then-current membership fee, will appear on my home telephone bill for as long as I wish to remain a member. I may cancel at any time by calling the toll-free number and owe nothing further.  
**CHECK WORD IF ALTERED**

X

Please sign here (Must be 18 years or older to endorse)

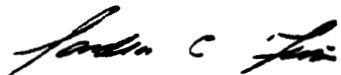
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All these valuable benefits and many more are yours, free for the next 30 days, with no obligation to continue beyond the introductory period.

**Enjoy continuous benefits and convenient billing.**  
Your AutoVantage Gold membership will be automatically activated, free for the next 30 days, when you cash the above check at any bank. After reviewing your membership materials, call 1-800-876-7787 during your 30-day trial period to cancel and owe nothing. Otherwise, your membership and calling card privileges will be extended and the \$6.99 monthly membership fee, or then-current membership fee, will appear on your home telephone bill for as long as you wish to remain a member. You may cancel at any time by calling the toll-free number and owe nothing further.

See for yourself how valuable the protection of AutoVantage Gold can be just by cashing the check.

Sincerely,



Sandra C. Finn  
Vice President and General Manager, AutoVantage Gold

P.S. Please cash your check by May 30, 1998.

Motor club benefits are provided by Road Rescue Roadservice Motor Club, Inc. Satellite services are underwritten by the New Hampshire Insurance Company, a member company of the American International Group, Inc., in states where required by law. Services may vary to conform with the laws of your state. The service provided up to three (3) emergency assistance calls per membership year. If additional emergency assistance is requested, service will be dispatched; however, the member will be responsible for charges incurred.

The membership offer is extended only to the person named on this letter.

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