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July 17, 1998

Blanca Bayo, Director  
Department of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RE: Initiation of Show Cause Proceeding against Minimum Rate Pricing, Inc., for Violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection; Docket No. 971482-TL

Dear Ms. Bayo:

In connection with the above-referenced matter, please find enclosed for filing an original and seven copies of a Response to Order to Show Cause and Petition for a Hearing. Please file the original and distribute the copies in accordance with your usual procedures.

Also please find enclosed a double-sided high density diskette, WordPerfect for Windows 6.1, containing the Response to Order to Show Cause and Petition for a Hearing and a copy of the Motion for Reconsideration by Minimum Rate Pricing, Inc.

If you have any questions or comments regarding this matter, please do not hesitate to call.

Sincerely yours,

Scott G. Schildberg

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SGS/msa  
Enclosures  
cc: Eric M. Rubin, Esquire  
Jeffrey Harris, Esquire  
William P. Cox, Esquire  
Charles Beck, Esquire  
Michael Gross, Esquire

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

|  |   |                            |
|--|---|----------------------------|
| In Re: Initiation of Show Cause Proceeding Against Minimum Rate Pricing, Inc., for Violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection) | ) |                            |
|  | ) |                            |
|  | ) | DOCKET NO. 971482-TL       |
|  | ) | Date Submitted for Filing: |
|  | ) | July 17, 1998              |
|  | ) |                            |

**RESPONSE TO ORDER TO SHOW CAUSE AND PETITION FOR A HEARING**

Pursuant to Florida Public Service Commission ("Commission") Order No. PSC-98-0313-FOF-TI ("Show Cause Order"), Florida Administrative Code, Minimum Rate Pricing, Inc. ("MRP or "Respondent"), files this Response to Order to Show Cause and Petition for a Hearing, and states as follows:

1. On February 23, 1998, the Florida Public Service Commission ("Commission") issued Order No. PSC-98-0313-FOF-TI ("Show Cause Order") and ordered MRP to show cause why its Certificate No. 4417 should not be canceled or why it should not be fined \$10,000.00 per apparent violation for a total fine of \$500,000.00.

2. On April 7, 1998, MRP filed a Motion to Dismiss or Quash Order No. PSC-98-0313-FOF-TI, Or, In the Alternative, Motion for More Definite Statement, Or, In the Alternative, Partial Response to Order to Show Cause by Minimum Rate Pricing, Inc. ("Motion to Dismiss").

3. On April 24, 1998, the Attorney General ("AG") and the Office of Public Counsel ("OPC") filed a Joint Response of the Attorney General and Public Counsel to Minimum Rate Pricing, Inc.'s Motion to Dismiss or Quash, or, In the Alternative, Motion for More Definite Statement or Partial Response to Show Cause Order ("AG/OPC Response").

4. On July 7, 1998, the Commission issued Order No. PSC-98-0908-PCO-TI, Order Denying Motion to Dismiss Or Quash Or, In the Alternative, Motion for More Definite Statement ("MRP Order")

5. On July 16, 1998, MRP filed a Motion for Reconsideration of the MRP Order ("Motion for Reconsideration").

6. In the event that the Show Cause Order is effective prior to the resolution of the Motion for Reconsideration, MRP responds to the Show Cause Order as set forth below. In the event that the Show Cause Order is not effective, MRP's Response set forth below shall become effective when the Show Cause Order becomes effective. MRP does not waive its rights under its Motion to Dismiss or Motion for Reconsideration by filing this Response and Petition for Hearing.

**Response to Show Cause Order**

7. With respect to the Show Cause Order, MRP states as follows:

a. MRP admits:

- i. That on May 7, 1996, MRP was granted certificate number 4417 to provide intrastate interexchange telecommunications service.
- ii. On October 31, 1997, the Federal Communications Commission ("FCC") issued a Notice of Apparent Liability for Forfeiture against MRP. The FCC has not taken any further action in that matter. There has been no hearing and the FCC has not issued an Order of Forfeiture against MRP and any issues raised or facts asserted in the notice remain unresolved.
- iii. MRP utilized telemarketing with in-house verification and welcome package as a method of obtaining new long distance customers.
- iv. Some customers complained that the telemarketing activities of MRP led them to believe they were signing up for a discount plan, not switching their long distance provider. MRP denies the substance of the complaints. Any representations made by MRP with respect to discounts comply with MRP's filed tariffs.
- v. MRP responded to some of these complaints by stating that it received all the information needed to process the order.

vi. Some customers have indicated that they did not receive the company's welcome package which is a required verification procedure. MRP denies the substance of the complaints. MRP mails every subscriber a verification notice and a fourteen (14) day cooling-off period notice without exception. MRP's records confirm that each complainant referenced in the Commission's Show Cause Order whose service was allegedly switched without authorization received these materials.

b. MRP is without knowledge as to the following statements in the Show Cause Order:

i. The Commission received its first slamming complaint logged against MRP on June 13, 1996, approximately one month after the company received its certificate. Since that time, our Division of Consumer Affairs has closed a total of 50 complaints from consumers for slamming infractions in apparent violation of Rule 25-4.118, Florida Administrative Code.

ii. Thereafter, from June 13, 1996, until December 17, 1997, our Division of Consumer Affairs staff closed a total of 50 consumer complaints against MRP as unauthorized carrier change

(slamming) infractions in apparent violation of Rule 25-4.118, Florida Administrative Code. This agency has received other complaints that are presently pending a response from MRP.

- c. MRP affirmatively states that:
  - i. MRP is complying with the Commission's rules.
  - ii. MRP believes that its alleged violations of Commission rules, even if true, are minor violations.
  - iii. MRP's safeguards are adequate.
  - iv. MRP did not switch long distance service without proper authorization in violation of Rule 25-4.118, FAC.
  - v. MRP made an appropriate refund or credit to each complainant who was a customer of MRP's long distance service, in accordance with its customer satisfaction policy, and not as an admission of any rule violation.
  - vi. There is no economic harm or no physical harm nor is there an adverse affect to the public health, safety or welfare or a significant threat of such harm in connection with the alleged violations.

8. With respect to the four complaints discussed in the Show Cause Order, MRP states as follows:

- a. The Show Cause Order mischaracterizes MRP's actions as "willful violations." The Order states "willful implies intent to do an act, and this is distinct from intention to violate a rule."
- b. MRP intended to follow its scripts, including its verification script, to send out its welcome package, and to record the switched telephone numbers properly. Isolated acts of misconduct by a contract solicitor does not equate under the law to a willful act of the corporation. MRP's scripts, including its verification script, and welcome package disclose the purpose in changing PIC service. In fact, the verification script confirms that the customer understands that MRP's long distance service is not affiliated with the customer's local or long distance phone company. MRP did not intend to fail to disclose that the purpose of the call was to solicit a change of the PIC of the customer.
- c. In connection with Mr. Barry Wayne Beauford's complaint, the company spoke with Mrs. Ada Beauford, a person with the same last name, and apparently, through inadvertent data entry, the wrong telephone number was recorded as result of the call. The welcome package would have been sent to the wrong address.

- d. In connection with Mr. Ernest Jones's complaint, Mrs. Deborah Jones did not recall speaking to the independent sales contractor for MRP on September 3, 1996. MRP states that the tapes and documents provided to Mr. Jones disclose the purpose to solicit a change of the PIC of the customer.
- e. In accordance with MRP's customer satisfaction policy, Mr. Beauford and Mr. Jones were provided with an appropriate refund or credit.
- f. In connection with the complaints of Mr. David Wilson and Mrs. Vincent Stellato, no switch orders were made and, accordingly, there can be no allegation of unauthorized switching.
- g. With respect to Mr. Wilson's complaint, MRP has not been provided with a correct name of an independent contractor sales representative who allegedly called on behalf of MRP. The name provided to MRP is not in MRP's sales representative database, accordingly, MRP without a more definite statement can not pursue the matter further. Attachment D of the Show Cause Order discusses some of MRP's policies to require the contractors to market in their legal names.
- h. Contrary to Mrs. Stellato's complaint, the independent sales representative did not tell Mrs. Stellato that MRP was enforcing a new FCC



regulation. Mrs. Stellato was told that MRP's rates and services are tariffed with the FCC.

- i. Under Section 364.285, Florida Statutes (1997), the Commission only has the authority to impose penalties or revoke certificates for refusal to comply with or willful violation of lawful rules, orders, or provisions of Chapter 364, Florida Statutes. MRP has not refused to comply. MRP's actions are not "willful violations." In two of the four complaints, the communications did not go past the sales representative level, so the information in the Welcome Package and the verification script were not needed. In the Jones complaint, the full record discloses that the consumer received sufficient information. Only in the Beauford complaint was an error made, and an inadvertent data processing entry error is not a "willful violation." MRP has more than 50,000 subscribers in Florida. The unverified statements of the four (4) complainants identified in the Show Cause Order or indeed the additional forty-six (46) complainants that are not in this record, do not substantiate an allegation of willfulness in the context of MRP's very large subscriber base. The fifty (50) complaints equate only to one-tenth (1/10) of one percent (1%) of MRP's customer base

in Florida. The Commission's reliance on unverified complaints in effect imposes a standard of zero tolerance for error. Such a draconian standard does not support a finding of wilfulness.

Petition for a Formal Proceeding

9. In the event that the Show Cause Order is effective, MRP requests a formal proceeding because this matter involves disputed issues of material fact which must be determined on the basis of an evidentiary record before a final order can be entered in this matter. The entry of a final order without a hearing, record, or sufficient notification of alleged offenses would constitute an arbitrary and capricious act by the Commission.

10. The agency involved is the Florida Public Service Commission whose address is 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. The docket number is Docket No. 971482-TI.

11. MRP's name and address are as follows:

Minimum Rate Pricing, Inc.  
300 Broadacres Drive  
P.O. Box 8000  
Bloomfield, NJ 07003

12. MRP's substantial interests will be affected because the Show Cause Order seeks:

- a. To find MRP in violation of Rule 25-4.118, Florida Administrative Code;
- b. To fine MRP in the amount of \$500,000.00; and
- c. To cancel its certificate of authorization

13. Known disputed issues of material fact include the following:

- a. Whether complaints upon which the Order relies are in fact true and accurate and support the actions proposed in the Order.
- b. Whether MRP has violated Rule 25-4.118, Florida Administrative Code;
- c. Whether such violations are "willful" violation; and
- d. If MRP has violated Rule 25-4.118, Administrative Code, what is the appropriate penalty.

14. MRP alleges that it has not violated Rule 25-4.118, Florida Administrative Code, and therefore, it should not be fined or otherwise penalized.

15. MRP's attorneys were served with a copy of the Show Cause Order on March 11, 1998, by hand delivery at a conference with representatives of the Commission in Tallahassee, Florida.

16. Wherefore, MRP requests a hearing in this matter pursuant to Section 120.57(1), Florida Statutes (1997).


Respectfully submitted,

RUBIN, WINSTON, DIERCKS, HARRIS &  
COOKE, L.L.P.  
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Jeffrey Harris  
District of Columbia Bar No.A925545  
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And

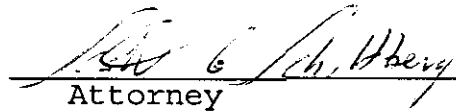
MARTIN, ADE, BIRCHFIELD & MICKLER, P.A.

BY:

  
\_\_\_\_\_  
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Scott G. Schildberg, Esquire  
Florida Bar Number: 0613990  
3000 Independent Square  
Jacksonville, Florida 32202  
(904) 354-2050

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the Response to Order to Show Cause and Petition for a Hearing by Minimum Rate Pricing, Inc., has been furnished to Blanca Bayo, Director of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by U.S. Mail, this 17th day of July, 1998; and copies of the foregoing have been furnished to William P. Cox, Staff Counsel, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; Michael Gross, Esquire, Department of Legal Affairs, The Capitol, PL-01 Tallahassee, Florida 32399-1050; Charles Beck, Esquire, Office of Public Counsel, c/o The Florida Legislature, 111 W. Madison Street, #812, Tallahassee, Florida 32399-1400; by U.S. Mail, this 17th day of July, 1998.

  
\_\_\_\_\_  
Attorney