

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Minimum Rate Pricing, Inc. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

DOCKET NO. 971482-TI  
ORDER NO. PSC-98-1392-PCO-TI  
ISSUED: October 15, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

I. BACKGROUND

On May 7, 1996, we granted Minimum Rate Pricing (MRP) Certificate Number 4417 to provide intrastate interexchange telecommunications service. MRP reported gross operating revenues of \$164,675,000 on its Regulatory Assessment Fee Return for the period January 1, 1997, through December 31, 1997. As a provider of interexchange telecommunications service in Florida, MRP is subject to the rules and regulations of this Commission.

On October 31, 1997, the Federal Communications Commission (FCC) issued a Notice of Apparent Liability for Forfeiture against MRP. The FCC found MRP apparently liable for a forfeiture in the amount of \$80,000 for violations of Section 258 of the Telecommunications Act of 1996.

On February 23, 1998, we issued Order No. PSC-98-0313-FOF-TI, requiring MRP to show cause why it should not have certificate number 4417 canceled or be fined \$500,000 for 50 apparent violations of Rule 25-4.118, Florida Administrative Code. In response to this order, MRP filed a Motion to Dismiss or Quash Order No. PSC-98-0313-FOF-TI, or, in the alternative, Motion for

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More Definite Statement, or, in the alternative, Partial Response to Order to Show Cause. On April 24, 1998, Robert A. Butterworth, Attorney General (Attorney General) and the Citizens of the State of Florida, by and through the Office of the Public Counsel (OPC), filed a joint response to MRP's motions. On July 7, 1998, we issued Order No. PSC-98-0908-PCO-TI denying the Motion to Dismiss or Quash and the Motion for More Definite Statement. On July 17, 1998, MRP filed a Motion for Reconsideration of Order No. 98-0908-PCO-TI. Also on this date, MRP filed its Response to the Order to Show Cause and Petition for a Hearing. This Order sets forth our ruling on MRP's Motion for Reconsideration.

## II. DISCUSSION

### A. STANDARD OF REVIEW

The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. V. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

### B. MRP'S MOTION FOR RECONSIDERATION

MRP asserts that we overlooked several dispositive points in reaching our decision on MRP's motions. MRP argues that we overstepped our limitations in our review of MRP's Motion to Dismiss by relying on the provision of copies of customer complaints outside the four corners of the Show Cause Order to evaluate the sufficiency of the Show Cause Order. MRP contends that our Show Cause Order does not contain sufficient factual allegations.

Next, MRP claims that we overlooked the actual holding of Commercial Ventures, Inc. v. Beard, 595 So. 2d 47 (Fla. 1992). MRP argues that this case does not set forth the minimum standards for factual allegations in show cause orders to satisfy due process

requirements. Instead, MRP believes the holding of this case is that a show cause order need not contain the phrases "refused to comply with" or "wilfully violated". MRP argues that we must provide additional factual allegations to inform MRP of how it violated a statute or a Commission rule.

Assuming Commercial Ventures does establish the minimum standards for show cause orders, MRP argues that we overlooked the fact that the Show Cause Order does not meet these standards. MRP argues that the Show Cause Order does not contain the same level of detailed factual allegations as were provided in the show cause order involved in Commercial Ventures. MRP contends that Section 120.60(5), Florida Statutes, requires that we provide MRP with an administrative complaint that affords MRP with reasonable notice of facts or conduct that warrant disciplinary action by this Commission. MRP argues that Cottrill v. Department of Insurance, 685 So. 2d 1371 (Fla. 1st DCA 1996) and Dyson v. Dyson, 483 So. 2d 546 (Fla. 1st DCA 1986) support its interpretation of the statute. MRP believes that the only response it can give to the Show Cause Order without additional factual detail is a general denial.

In addition, MRP contends that our statement, "all of the complaints in the Show Cause Order result from bonafide allegations that customers' long distance carriers were changed without their permission in violation of Rule 25-4.118, Florida Administrative Code," is clearly erroneous. MRP notes that in two of the four examples of complaints contained in the Show Cause Order the customer's long distance carrier was never switched.

### III. RULING

We disagree with MRP that we overlooked various points of law and fact when we denied MRP's Motion to Dismiss and Motion for More Definite Statement. First, we do not believe we overstepped our legal limitations in reviewing MRP's Motion to Dismiss. We did not rely on the copies of customer complaints provided to MRP by the Commission's Division of Consumer Affairs to demonstrate that the Show Cause Order provided MRP with full and complete notice of the show cause proceedings and the basis of our authority as required by Commercial Ventures, Inc. v. Beard, 595 So. 2d 47 (Fla. 1992). This information was included only to supplement a sufficiently detailed Order and to indicate that in addition to more than adequate notice provided by our Show Cause Order, the Division of Consumer Affairs had provided MRP with copies of all of the complaints included in the Show Cause Order. Furthermore, MRP has responded through its own personnel to each and every one of the 50 complaints in question. The Order Denying the Motion to Dismiss states that the Show Cause Order (itself) "provides sufficiently

detailed information". Thus, our order denying the Motion to Dismiss did rely on the information contained within the four corners of the Show Cause Order, and we did not overlook this legal requirement when we rendered our decision on the Motion to Dismiss.

Second, despite MRP's argument to the contrary, our Show Cause Order did provide sufficient factual allegations under the Commercial Ventures decision. The Order Denying the Motion to Dismiss explained that we agreed with the AG and the OPC's arguments that the Show Cause Order exceeds the minimum requirements established by the Supreme Court of Florida in the Commercial Ventures decision for giving full and complete notice of the proceedings/alleged violations and the basis of our authority. We disagree with MRP that the Commercial Ventures case does not provide the minimum requirements for notice and due process. This Florida Supreme Court decision specifically addresses a Florida Public Service Commission show cause order. The Court found that the allegations contained in the Commercial Ventures show cause order were clearly adequate and gave the company full and complete notice of the proceedings and the basis for our authority. See Commercial Ventures, 595 So. 2d at 48. The "clearly adequate" allegations set forth in the Commercial Ventures show cause order are as follows:

Commercial Ventures, Inc. a certified PATS (telephone company providing pay telephone services) subject to the jurisdiction of this Commission, repeatedly failed to comply with the above-identified rules (Rule 25-24.515 (4)(5)(7)(10), Florida Administrative Code). The Commission will not tolerate cavalier disregard of our rules by regulated utilities. Section 364.285, Florida Statutes, gives the Commission authority to impose a fine of up to \$5,000 per day for violation of Commission rules, each day constituting a separate offense.

Id. As stated earlier in this Order and in the Order Denying MRP's Motion to Dismiss and Motion for More Definite Statement, our Show Cause Order provided the same level of specificity in its allegations against MRP as is found in the Commercial Ventures show cause order. In fact, the MRP Show Cause Order provided greater factual detail. The MRP Show Cause Order explains that customers complained that the telemarketing activities of MRP led them to think that they were signing up for a discount plan, not switching their long distance provider. Furthermore, some of these customers did not receive the welcome package verification as required by the

anti-slamming rule alleged to have been violated, Rule 25-4.118(2)(d), Florida Administrative Code. Thus, the Show Cause Order details the specific pattern of conduct that supports the allegations in the Show Cause Order that MRP had apparently violated Rule 25-4.118 on 50 separate occasions. MRP thus has full and complete knowledge of what it has allegedly done in violation of our rules. It is abundantly clear that MRP's due process rights have and will be adequately protected through issuance of the Order to Show Cause and the opportunity to request a formal hearing on this matter.

Finally, MRP's conclusion that the statement "all of the complaints in the Show Cause Order result from bonafide allegations that customers' long distance carriers were changed without their permission in violation of Rule 25-4.118, Florida Administrative Code" is clearly erroneous is, in fact, incorrect itself. The four complaint examples are not all part of the 50 bonafide complaints for alleged violations of Rule 25-4.118 received as of the day of our vote to issue the Show Cause Order, February 3, 1998. The alleged facts regarding the complaints of Mr. David Wilson and Mrs. Vincent Stellato specified in the Order indicate that these individuals' long distance carriers were not switched. These two examples, as stated in the Show Cause Order, were merely included to demonstrate the alleged deceptive marketing techniques utilized by MRP. The two other examples do represent bonafide complaints where the customers' carriers were allegedly changed without authorization. As the Order Denying MRP's Motions correctly noted, the 50 complaints alleged in the Show Cause Order do result from bonafide allegations of unauthorized carrier switches by MRP in violation of Rule 25-4.118.

Upon consideration, it is clear that MRP has not identified any factual or legal basis for its Motion for Reconsideration. Its motion falls short of the standard set forth in Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962). Based on the foregoing, MRP's Motion for Reconsideration of Order No. PSC-98-0140-FOF-TP is hereby denied.

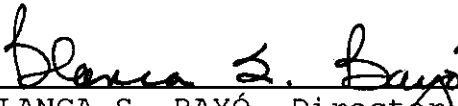
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Minimum Rate Pricing, Inc.'s Motion for Reconsideration of Order No. PSC-98-0908-PCO-TI denying its Motion to Dismiss or Quash or, in the alternative, Motion for More Definite Statement, is denied. It is further

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ORDERED that this docket shall remain open to address Minimum Rate Pricing, Inc.'s July 17, 1998, Response to the Order to Show Cause and Petition for a Hearing.

By ORDER of the Florida Public Service Commission this 15th day of October, 1998.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

WPC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in

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the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.