



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: JANUARY 7, 1999

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

FROM: DIVISION OF LEGAL SERVICES (COX) *WPC mcb*
 DIVISION OF CONSUMER AFFAIRS (DURBIN) *KB*
 DIVISION OF COMMUNICATIONS (BIEGALSKI) *W*

RE: DOCKET NO. 971482-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST MINIMUM RATE PRICING, INC. FOR VIOLATION OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER SELECTION

DOCKET NO. 980335-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST MINIMUM RATE PRICING, INC. FOR VIOLATION OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER SELECTION

AGENDA: 01/19/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\971482.RCM

CASE BACKGROUND

Minimum Rate Pricing (MRP), Certificate Number 4417, is a provider of interexchange telecommunications service and was certificated on May 7, 1996. MRP reported gross operating revenues of \$164,675,000 and intrastate revenues of \$3,500,000 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 February 23, 1998, the Commission issued Order No. PSC-98-0313-FOF-TI, in Docket No. 971482-TI, requiring MRP to show cause

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why it should not have certificate number 4417 canceled or be fined \$500,000 for 50 apparent unauthorized carrier change (slamming) violations that were closed by the Division of Consumer Affairs between June 13, 1996 through January 20, 1998.

Order No. PSC-98-0259-PCO-TI was issued on February 9, 1998, acknowledging the Office of Public Counsel's request to intervene that was filed on January 23, 1998. In addition, Order No. PSC-98-0388-PCO-TI was issued on March 12, 1998, acknowledging the Attorney General's Office request to intervene that was filed on January 26, 1998.

On March 5, 1998, staff opened a second docket to initiate show cause proceedings for the continuous inflow of consumer complaints regarding unauthorized carrier changes. Since January 20, 1998, staff has received an additional 423 complaints regarding unauthorized carrier changes by MRP. Staff has determined 144 to be apparent unauthorized carrier changes.

However, staff believes that a large number of these complaints stem from the recapture provision in its tariff which allowed MRP to take back any customer that did not notify them of a change in the customer's long distance service. MRP has since abandoned this practice. MRP also ceased marketing in the State of Florida in July of 1998, pending the outcome of the show cause proceeding. Staff notes that although complaints have been received since the cessation of marketing by MRP, the complaints stem from changes that occurred prior to July 1998. Additionally, staff believes that MRP's use of the negative option postcard is the basis for complaints as well. MRP addresses its new verification method in its settlement offer.

After numerous meetings with MRP regarding the pending show cause, MRP filed an offer of settlement on December 17, 1998. (Attachment A, Pages 5-11) Staff's recommendations on MRP's settlement proposal is set forth below.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Minimum Rate Pricing, Inc. to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection?

RECOMMENDATION: Yes. (Biegalski)

STAFF ANALYSIS: On December 17, 1998, after several meetings with staff, MRP submitted an offer to settle. In its settlement offer MRP agreed to do the following:

- MRP will continue to suspend telemarketing practices in Florida through July 8, 1999.
- Upon resuming telemarketing practices in Florida, MRP will implement independent third party verification on outbound telemarketing contacts.
- MRP, upon resuming telemarketing practices in Florida, will not represent itself as a "discount plan" or that it utilizes the AT&T, MCI, Sprint, or any other carrier's network.
- MRP will continue to abandon the practice of recapturing previous subscribers.
- MRP will agree to an audit by staff of its PIC change procedures.
- MRP will revise its script to insure that it cured any ambiguity in its solicitation.
- MRP will provide a written complaint report on a monthly basis for twelve months and will provide a copy of all changes to all telemarketing solicitation and verification scripts. In addition, MRP will agree to a monthly conference call with staff to review the status of complaints and any other concerns staff may have.
- MRP will make a total contribution of \$100,000, in twelve equal monthly installments, to the general revenue fund of the State of Florida with no admission of liability or wrongdoing.

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Staff supports MRP's proposal not to resume telemarketing in Florida until July 8, 1999. Staff believes this will allow MRP time to revise its telemarketing scripts in a way that would not be confusing to the consumer. Staff supports MRP's proposal that upon resuming telemarketing in Florida, it will utilize independent third party verification in lieu of negative option postcards. Staff believes this will enable MRP to ensure that the customer is choosing MRP to be its long distance provider. Staff also supports MRP's proposal of an audit. Staff believes this will enable staff to make suggestions on how MRP can improve its PIC change process. In addition, staff supports MRP's proposal to revise its telemarketing and verification scripts to insure that it cured any ambiguity in its solicitation. Staff believes this will enable the consumer to make an informed decision regarding its long distance service.

The company has satisfactorily addressed each of staff's concerns. Moreover, the company has been very cooperative in resolving all issues. Therefore, staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, in the amount of \$100,000.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. With the approval of Issue 1, this docket should remain open pending the remittance of the \$100,000 voluntary contribution. MRP will remit the \$100,000 voluntary contribution in twelve equal monthly installments. Upon remittance of the final settlement payment, this docket should be closed. The \$100,000 settlement 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. (Cox)

STAFF ANALYSIS: If the Commission approves the staff recommendation in Issue 1, this docket should remain open pending the remittance of the \$100,000 voluntary contribution. The voluntary contribution will be remitted in twelve equal monthly installments. Upon remittance of the final settlement payment, this docket should be closed.

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS.

ATTORNEYS AT LAW

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ATTACHMENT A
DOCKET NO. 971482-TI; 980335-TI

JANUARY 1999

RECEIVED

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ADMINISTRATION
MAIL ROOM

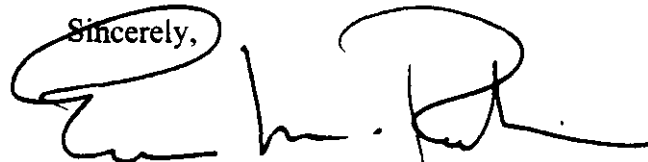
December 17, 1998

Will Cox, Esq.
Martha Miller, Esq.
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

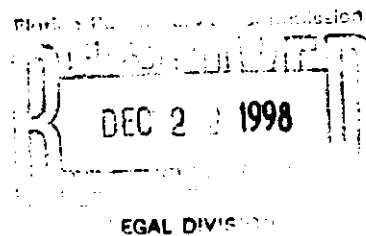
Dear Will and Martha:

MRP submits the following settlement proposal in lieu of the Commission continuing the show cause proceedings against the company in Docket Nos. 971482-TI and 980335-TI. This offer of settlement is conditioned upon the entry of a final order approving all of the terms delineated herein, and the closing of both of the dockets. If any part of the offer is not approved, the entire offer of settlement shall be deemed withdrawn.

Sincerely,



Eric M. Rubin



ATTACHMENT 1

1. **PENALTIES** - MRP would pay to the Commission a voluntary contribution of One Hundred Thousand Dollars payable in twelve equal monthly installments with the first payment due upon execution by the parties.
2. **SUSPENSION OF OUTBOUND TELEMARKETING IN FLORIDA** - MRP agrees to continue to suspend telemarketing of long distance service or face-to-face solicitation for a period of one year commencing on the date of its last Florida solicitation on July 7, 1998 and continuing until July 8, 1999.
3. **REQUIREMENTS FOR FUTURE TELEMARKETING IN FLORIDA** - MRP agrees that all future telemarketing shall conform to the individual marketing standards set forth in Attachment 2 which incorporates the requirements that are contained in the consent judgment between MRP and twenty other states.
4. **INDEPENDENT THIRD-PARTY VERIFICATION** - After July 8, 1999, MRP agrees to use independent third party verification to verify every customer authorization in response to an outbound telemarketing sales solicitation. MRP could not utilize the Welcome Package as a verification method, notwithstanding that such verification might otherwise be permitted under FCC or PSC regulation.
5. **ABANDONMENT OF RECAPTURE PROVISIONS** - MRP would agree to continue to abandon its prior practice of recapturing subscribers who did not first notify the company of their decision to change from MRP to another long distance carrier. As you are aware, MRP engaged in this practice pursuant to a filed tariff, which was withdrawn by the Company in November, 1997.
6. **PSC AUDIT** - MRP would agree to a post settlement audit by staff of its PIC change procedures which would include an onsite visit to the Company's facilities. It is understood that the purpose of the audit would be to enable the Commission to verify the company's compliance with the Commissions regulations and that all such audits would be subject to the Commissions confidentiality rules.
7. **CLARIFICATION OF PAGER SOLICITATION** - MRP would agree to revise its script to insure that it cured any ambiguity in its solicitation. In the event a pager is offered, that offer and the customers acceptance of the offer, must be explicit and must be verified by a third party verifier and must be part of the initial solicitation. In addition, MRP must ship all pagers UPS and provide a pre-paid UPS voucher for the return of the pager if the consumer requests cancellation of the service if it is not longer wanted. MRP understand's your concern about cramming. But pagers are distinct from a situation where a company sells augmented services like call waiting or message retrieval services. Unlike those services, pager sales place the company rather than the consumer at risk of

an unwanted sale because the company is sending a valuable electronic device to the consumer rather than just changing a service configuration. It makes no sense at all for a company like MRP who will ship a pager without charge to risk the capital and delivery expense involved by sending out pagers to subscribers who don't want it and may refuse to return it.

8. **COMPLAINT REPORTS** - MRP agrees to provide 1) a written complaint report on a monthly basis for a twelve month period, and in addition would provide a copy of all changes to all telemarketing solicitation and verification scripts as part of that written report. 2) MRP would also agree to a monthly conference call with staff to review the status of complaints including a detailed description of the cause of the complaint and other matters that the staff might raise.

ATTACHMENT 2

MRP shall permanently refrain and desist from engaging in the following acts or practices in telemarketing of its telephone services:

- a. Representing, expressly or by implication, that a sales person is a "notification operator" or some term of similar import or otherwise misrepresenting the function, role or status of a sales person;
- b. Representing, expressly or by implication, to a particular customer that a particular telecommunications service is available at a rate that is less than the rate that particular subscriber is paying to his or her current carrier for such service unless defendant first ascertains the subscriber's plan with his or her current carrier and has a reasonable basis to make such representation. Absent particular subscriber information, MRP may only represent its applicable rate and any comparison shall be limited to a comparison between such rate and the prevailing basic rates offered by one or more dominant suppliers of such service.
- c. Failing to provide clearly and conspicuously accurate and complete information about material terms and conditions of the offer, including but not limited to, limitations and restrictions related to discounts to be provided such as minimum time, time of day requirements for discounts, rate distinctions between intrastate and interstate toll calls, minimum usage requirements, or termination fees;

d. Representing, expressly or by implication, that MRP is anything other than a company engaged in providing long distance telecommunications services, unless such is the case;

e. Representing, expressly or by implication, that MRP's long distance service uses network facilities of AT&T, MCI, Sprint or other carrier unless such is the case;

f. Representing, expressly or by implication, that MRP or persons soliciting prospective customers on behalf of MRP are employees, agents, acting on behalf of another carrier, unless such is the case;

g. Representing, expressly or by implication, that the offered rate for a telecommunications service is a specific percentage off the basic rates for telecommunications services, unless such is the case;

h. Representing, expressly or by implication, that the amount to be charged for a toll call is determined at the time the toll call is made or on a periodic basis by comparing the charge that AT&T, Sprint, MCI or another telecommunications service would charge for the same call and using the lowest rate as the basis to determine the cost of the particular toll call, unless such is the case;

i. Failing, in the context of a telemarketing solicitation initiated by defendants for telecommunications service, to disclose clearly and conspicuously before any statement other than an initial greeting:

i. the identity of sales person;

ii. that MRP is a long distance company, not affiliated with the

- customer's present long distance company;
- iii. that long distance service is being offered for sale; and
 - iv. that a customer is being asked to agree to convert or switch presubscribed long distance service from their current carrier to MRP;
 - j. Failing to obtain a customer's authorization before submitting a change order to change a customer's long distance carrier to MRP;
 - k. Failing to clearly and conspicuously disclose at the beginning or inception of any method used to verify a customer's agreement to change long distance service to MRP that a customer's long distance service will be changed from the current carrier to MRP;
 - l. Representing, expressly or by implication, that MRP is a facilities based long distance carrier or part of a facilities based long distance carrier, unless such is the case. Such representations include, but are not limited to, using the term "minimum rate pricing" in close conjunction with AT&T, MCI or Sprint, unless used for the purpose of differentiating MRP from its competitors;
 - m. Representing, expressly or by implication, that the Federal Communications Commission, the Florida Public Service Commission or other government entity has approved or endorsed defendants' business or offer. In the event defendants use the name of the Federal Communications Commission or other governmental entity in the course of a solicitation, defendants shall concurrently, clearly and conspicuously disclose that such governmental entity

has not approved or endorsed the offer;

n. Failing to confirm in writing a customer's agreement to obtain long distance service from MRP;

o. Failing to honor promptly a customer's oral or written request to cancel service provided by MRP;

p. Providing in tariffs that customers who fail to notify MRP directly of a switch to another carrier will automatically be switched back to MRP; and

q. Submitting PIC orders to local exchange carriers for MRP customers who have changed interexchange carriers without complying with 47 CFR §§64.1100 and 64.1150; and it is further