

State of Florida



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-**

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**DATE:** OCTOBER 4, 2001

**TO:** DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (W. KNIGHT) - *h Bk*  
DIVISION OF COMPETITIVE SERVICES (D. BUYS) *DBB, R*

**RE:** DOCKET NO. 011140-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST ORION TELECOMMUNICATIONS CORP D/B/A ORION TELECOMMUNICATIONS CORP OF NEW YORK FOR APPARENT VIOLATION OF RULE 25-24.910, F.A.C., CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED.

**AGENDA:** 10/16/01 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\011140.RCM

**CASE BACKGROUND**

- April 24, 2000 - Orion Telecommunications Corp d/b/a Orion Telecommunications Corp of New York (Orion) submitted its application for a Certificate of Public Convenience and Necessity (Certificate) to the Florida Public Service Commission (Commission). Docket No. 000477-TI was opened to address the issue.
- August 9, 2000 - Orion requested that its application in Docket No. 000477-TI be withdrawn without prejudice.
- August 14, 2000 - Staff considered Orion's application for a Certificate withdrawn and Docket No. 000477-TI was closed administratively.

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- July 9, 2001 - The Commission staff received a customer complaint regarding a prepaid phone card titled "Florida Supreme." The complainant reported that the card was purchased earlier in the month of July 2001. The service provider listed on the back of the phone card is OTC. (Attachment A)
- July 26, 2001 - Staff called the customer service number listed on the back of the card. The customer service representative indicated OTC was Orion Telecommunications Corp and provided staff with a post office box address.
- July 30, 2001 - Commission staff sent a certified letter to Orion requesting that the company investigate and resolve its customer's complaint.
- August 21, 2001 - Orion sent staff a facsimile of the letter it sent to its customer resolving the complaint. (Attachment B)
- August 22, 2001 - This docket was opened to initiate show cause proceedings against Orion for providing prepaid calling services without first obtaining a certificate in apparent violation of Rule 25-24.910, Florida Administrative Code.

The Florida Public Service Commission is vested with jurisdiction over this matter pursuant to Sections 364.285, 364.33 and 364.337, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission order Orion Telecommunications Corp d/b/a Orion Telecommunications Corp of New York to show cause why it should not be fined \$25,000 for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required?

**RECOMMENDATION:** Yes. The Commission should order Orion Telecommunications Corp d/b/a Orion Telecommunications Corp of New York to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The company's response should contain specific allegations of fact and law. If Orion fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the fine should be deemed assessed. If Orion pays the fine, it should be remitted to the State of Florida General Revenue Fund. If the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection. **(W. Knight/D. Buys)**

**STAFF ANALYSIS:** Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, states:

A company shall not provide prepaid calling services without first obtaining a certificate of public convenience and necessity as a local exchange company, alternative local exchange company, or interexchange company.

The Commission received a customer complaint regarding a prepaid phone card titled "Florida Supreme." The back of the card states, "services and network provided by: OTC." Staff investigated the complaint and determined that OTC is Orion Telecommunications Corp., and is the prepaid calling services provider for the "Florida Supreme" prepaid phone card. The letter that Orion sent to its customer to resolve the complaint indicates that Orion is providing prepaid calling card services in Florida.

Orion submitted an application for a Certificate to the Commission on April 24, 2000. In its application, Orion indicated that it intends to resell all forms of telephone service in the State of Florida including prepaid debit card services. However, for reasons unknown to staff, the company withdrew its application before the Commission voted on the issue.

It appears to staff that Orion continued with its plans to provide prepaid calling services in Florida even after it withdrew its application for a Certificate. Staff believes that Orion knew it should obtain a Certificate and apparently decided to provide prepaid calling services without first obtaining a Certificate in apparent violation of Rule 25-24.910, Florida Administrative Code.

Staff believes that Orion's conduct of providing prepaid calling services without first obtaining a Certificate in apparent violation of Rule 25-24.910, Florida Administrative Code, has been "willful" within the meaning and intent of Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[I]n our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as Orion's conduct at issue here, would meet the standard for a "willful violation."

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

The proposed fine amount in this docket is consistent with fine amounts proposed in previous dockets for similar apparent violations.

Accordingly, staff recommends that the Commission should order Orion Telecommunications Corp d/b/a Orion Telecommunications Corp of New York to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The company's response should contain specific allegations of fact and law. If Orion fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the fine should be deemed assessed. If Orion pays the fine, it should be remitted to the State of Florida General Revenue Fund. If the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No. If staff's recommendation in Issue 1 is approved, Orion will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amounts proposed. If Orion timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceedings. If Orion fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing waived, and the fines should be deemed assessed. If the company fails to respond to the Order to Show Cause and the fines are not paid within ten business days after the expiration of the show cause response period, they should be forwarded to the Office of the Comptroller for collection and this docket may be closed administratively. (W. Knight)

**STAFF ANALYSIS:** If staff's recommendation in Issue 1 is approved, Orion will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amounts proposed. If Orion timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceedings. If Orion fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing waived, and the fines should be deemed assessed. If the company fails to respond to the Order to Show Cause and the fines are not paid within ten business days after the expiration of the show cause response period, they should be forwarded to the Office of the Comptroller for collection and this docket may be closed administratively.

**ENGLISH:**

1. Dial: 1-877-896-3054  
2. When prompted, enter your card number

**SPANISH:**

1. Marque: 1-877-806-3127  
Favor no cuelgue, Espere instrucciones en español.
2. Cuando se le indique, marque los numeros:

**071-990-3731**

3. For calls within the U.S. to Canada or the Caribbean: Dial 1 + area code and the telephone number. For calls to any other country: Dial 011, country code, city code and telephone number. To make another call don't hang up, press ##.

3. Para llamar dentro de los Estados Unidos, Canada o el Caribe: Marque 1 + el codigo de area + numero telefonico. Para llamar a cualquier otro pais: Marque 011 + codigo del pais + codigo de la ciudad + numero telefonico. Para hacer otra llamada no cuelgue, sino marque ##.

**For customer service Dial:  
1-800-330-1060**

This card expires 90 days after first use.  
Este tarjeta expira 90 dias despues del primer uso.

**0326-4026-0000015240**

Service & Rewards  
provided by: BTI

*Payless, talk more!*  
**FLORIDA**  
**Supreme**  
prepaid phone card  
**\$10**



Orion Telecommunications

**ORION TELECOMMUNICATIONS  
CORP.**

42-40 Bell Boulevard, Bayside, New York 11361  
718/631-5600 ; fax 718/423-8003

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August 21, 2001

Dear Ms. McGregor,

On behalf of Orion Telecommunications Corporation I would like to apologize for any inconvenience you may have experienced in your purchase of Orion products.

Enclosed please find a money order in the amount of \$10.00, to compensate you for your inconvenience.

Yours truly,

  
George J. Gregory

cc Dale R. Buys ✓  
State of Florida  
Public Service Commission  
Regulatory Analyst