

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 011140-TI
ORDER NO. PSC-01-2181-SC-TI
ISSUED: November 6, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER TO SHOW CAUSE

BY THE COMMISSION:

On 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 this Commission. On August 9, 2000, Orion requested that its application be withdrawn without prejudice. On August 14, 2000, our staff considered Orion's application for a Certificate withdrawn, and closed the docket administratively.

On July 9, 2001, our staff received a customer complaint regarding a prepaid phone card titled "Florida Supreme." The complainant reported that the card was purchased earlier in month of July 2001. The card listed the service provider as OTC. Staff called the customer service number, and the representative indicated OTC was Orion Telecommunications Corp and provided staff with a post office box address. A certified letter was then sent to Orion requesting that the company investigate and resolve its customer complaint. On August 21, 2001, Orion sent us a facsimile

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of the letter it sent to its customer resolving the complaint. On 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 Commission is vested with jurisdiction over these matters pursuant to Sections 364.285, 364.33 and 364.337, Florida Statutes.

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.

Our staff investigated the customer complaint regarding a prepaid phone card titled "Florida Supreme." The back of the card states, "services and network provided by: OTC." It was 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 us on April 24, 2000. In its application, Orion indicated that it intended to resell all forms of telephone service in the State of Florida including prepaid debit card services. However, for reasons unknown, the company withdrew its application before we voted on the issue.

It appears that Orion continued with its plans to provide prepaid calling services in Florida even after it withdrew its application for a Certificate. We believe 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.

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, we are 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).

Upon consideration, Orion Telecommunications Corp d/b/a Orion Telecommunications Corp of New York shall have 21 days from the date of this Order to show cause in writing 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.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Orion Telecommunications Corp d/b/a Orion Telecommunications Corp of New York, shall show cause in writing within 21 days of the date of this Order why it should not be fined \$25,000 or have its certificate canceled for apparent violation of Rule 25-24.910, Florida Administrative Code. It is further

ORDERED that any response to the Order to Show Cause filed by Orion Telecommunications Corp d/b/a Orion Telecommunications Corp of New York shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, as well as a waiver of the right to a hearing, and will result in the automatic assessment of the fine. It is further

ORDERED that if Orion Telecommunications Corp d/b/a Orion Telecommunications Corp of New York pays the fine, it shall be remitted to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. It is further

ORDERED that should Orion Telecommunications Corp d/b/a Orion Telecommunications Corp of New York fail to respond to this Order and the fine is not received 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. It is further

ORDERED that in the event Orion Telecommunications Corp d/b/a Orion Telecommunications Corp of New York pays the fine, this docket shall then be closed. It is further

ORDERED that should Orion Telecommunications Corp d/b/a Orion Telecommunications Corp of New York timely respond to this Order, the docket shall remain open pending resolution of the show cause proceeding.

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By ORDER of the Florida Public Service Commission this 6th Day
of November, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

WDK

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.

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This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 27, 2001.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.