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Reply to Tallahassee

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November 12, 2002

Ms. Blanca S. Bayo, Director
Division of Commission Clerk &
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket 020645-TI: Compliance investigation of UKI Communications, Inc. (UKI) for apparent violation of Rules 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection

Dear Ms. Bayo:

UKI would like to satisfy the Commission's concerns in the above matter through a negotiated settlement. The purpose of this letter is to provide staff important background information and to propose the basic elements of a settlement.

Staff Recommendation

On September 19, 2002, staff filed its recommendation that the Commission initiate an enforcement proceeding against UKI for 162 apparent violations of Rule 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection. Staff recommended that the Commission impose a penalty on UKI Communications, Inc. of $10,000 per apparent violation, for a total of $1,620,000.

UKI is a recently established and relatively small IXC. It obtained Commission inter-exchange company (IXC) Certificate Number 7332 on March 2, 2000. UKI reported $593,855.52 in gross intrastate operating revenues for calendar year 2001.

According to staff, from January 1, 2001, to June 24, 2002 - The Commission's Division of Consumer Affairs (CAF) received 230 consumer complaints against UKI. The number of complaints per month against UKI received by the Commission from January 1, 2001 through June 24, 2002, appear to be distributed as a bell curve (with the exception of a dip in complaints in July and August of 2001). The number of

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complaints per month peaked at 33 in November 2001. Without regard to the merits of the complaints, this suggests that the problems were episodic.

Staff determined that 162 of the 230 consumer complaints related to apparent unauthorized carrier change in violation of Rule 25-4.118, Florida Administrative Code. This determination of "apparent violations" is based upon (a) how the CAF analyst logged in consumer complaint and (b) staff's review of TPV tapes. Based on the review of the tapes, staff concluded that there were:

1. 111 apparent violations of the rule because the independent third party verifier (a) identified UKI as "United Communications" or (b) asked if customer was authorized to "use" the service (as opposed to "change" the service), or (c) both;
2. 47 apparent violations because UKI was not able to provide TPV tapes; and
3. 4 apparent violations because the TPV tapes were unintelligible.

According to staff these are apparent violations, and if true are "willful" within the meaning and intent of Section 364.285, Florida Statutes. In suggesting a penalty based on $10,000 per alleged slam, staff notes that a company may be fined up to $25,000 per occurrence of willful violations.

UKI Response

UKI appreciates the opportunity to address concerns about rule violations and to propose the elements of a settlement so that formal proceeding may be avoided.[1] UKI acknowledges that it experienced significant start-up problems in its first year of marketing and regrets the resulting inconveniences to staff and consumers.

UKI is concerned that staff believes that these problems reflect an indifference to consumer welfare and Commission rules. This is simply not the case. UKI's management installed a reasonable system to ensure that marketing did not result in slams or consumer complaints. Unfortunately, UKI experienced problems in each component of this system and as a result its first major marketing campaign resulted in too many complaints.

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[1] This letter and its contents are intended as communications in furtherance of a settlement. Nothing in this letter constitutes an admission that UKI has refused to comply with or has willfully violated any lawful rule or order of the Commission.

With respect to 162 of these consumer complaints alleged to involve "apparent" unauthorized carrier charges, UKI is not aware of any consumer alleging that he or she declined UKI's service. Moreover, UKI did not submit any carrier change order to an ILEC without first receiving confirmation from the independent TPV that the change was authorized. With all due respect to staff, this is not a case about unauthorized carrier changes.

UKI's Conversion System Was Reasonable

UKI's basic approach to marketing its services and responding to consumer complaints was sound. UKI employed in-house telemarketers to generate sales. They were and are employees of the company. Before being allowed to make sales calls, each marketer was given training, which included a review of rules against slamming. The telemarketers were provided scripts and were monitored by on-floor supervisors. Moreover, all outbound calls were taped on micro-cassettes, which were reviewed as needed. (Unfortunately, the tapes were recycled so the records of calls were not preserved beyond a few weeks.) Under this system, customer complaints to the company could be fully addressed and the conduct of the telemarketers reviewed. As a result, telemarketers prone to irresponsibility did not last beyond a day or two.

When the telemarketer made a sale, he or she would hand off the customer to the TPV as contemplated under Florida rules. If UKI receive confirmation from the TPV that carrier change was authorized, UKI would send the order to the ILEC. Also, within 3-5 days of receiving the confirmation, UKI would send a welcome letter to the customer. The letter included an 800 number for the customer to call if there were questions.

With this system in place, UKI's management believed in good faith that it was complying with regulations and it could reasonably respond to customer complaints or staff inquiries. When a customer did call to complain, it was UKI's policy to immediately afford the customer refunds or adjustments due under applicable regulations.

So what went wrong? In a nutshell, UKI experienced performance problems in three key components of its system.

1. First, the independent contractor TPV did not perform adequately.
2. Second, the company's MIS component experienced problems and the welcome letters became delayed.
3. Third, UKI's website platform did not perform adequately, creating communication problems.

Elements of Proposed Settlement

UKI suggests the settlement should include three major components: (1) Implementation of remedial measures by UKI; (2) Normal Case Reporting/Monitoring of Remedial Measures and Restitution; and (3) Payment in lieu of a fine. UKI proposes the following with respect to each component.

Implementation Of Remedial Measures By UKI

As already noted, UKI is independently implementing significant remedial measures. The settlement agreement should reflect these measures because they provide assurance to the Commission and public that the rash of complaints was episodic.

- New TPV provider with industry standard contract.
- Improved training program for sales staff.
- Improve program to supervise sales & marketing.
- Permanent retention of sales tapes.
- Program to monitor TPV.
- Add staff to consumer and regulatory compliance functions.
- Written protocols for responding to staff.
- Written protocols for responding to consumer complaints.
- Review of sales compensation to avoid incentives for slamming.
- Change Website provider/platform (email bounce-back problem).
- Help consumers return to IXC.
- Appropriate credits to consumers who alleged that they were switched to UKI without authorization.
- Implement warm transfer.

Reporting/Monitoring of Remedial Measures and Restitution

Because of UKI's start-up problems, staff may wish to include in the settlement certain reporting and monitoring provisions. If staff believes this would be useful, UKI would be amendable to such conditions. These could include the following:

- Sales script to staff.
- TPV script to staff.
- Quarterly reports to staff during 2003.

Payment In Lieu Of A Fine

This docket is the result of what may be viewed as unfortunate start-up problems. When UKI recognized that these complaints related to the breakdown of its system, on its own initiative it ceased marketing Florida. Given that this is the first problem UKI has had, its voluntary cessation of marketing, and its commitment to making the changes necessary to avoid customer complaints, UKI believes that a payment in the amount of $25,000.00 is reasonable and consistent with the Commission's historic approach, which is to protect customers and encourage company self-regulation.

Conclusion

UKI wishes to reiterate its appreciation of the opportunity to submit this broad proposal. UKI looks forward to meeting with staff and dealing constructively with staff's concerns.

Sincerely,

Patrick K. Wiggins

Patrick K. Wiggins

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