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State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: June 30, 2003
TO: Division of the Commission Clerk and Administrative Services (Bayó)
FROM: Division of Competitive Markets & Enforcement (M. Watts)
RE: Docket No. 020645-TI, Compliance investigation of UKI Communications, Inc. for apparent violation of Rules 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection.

UKI Communications, Inc. submitted the attached settlement offer pertaining to Docket No. 020645-TI. Please place in the docket file accordingly.

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June 23, 2003

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 Communications, Inc. (UKI) would like to resolve the Commission's concerns in the above matter without further process and on a mutually agreeable basis. This letter is an offer of settlement, and as an offer of settlement, nothing in this letter may construed as an admission against interest nor used against UKI should this matter not settle. 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.

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 interexchange company (IXC) Certificate Number 7332 on March 2, 2000. UKI reported $593,855.52 in gross intrastate operating revenues for calendar year 2001.

Significant Disagreement Between UKI and Staff

Although UKI believes that it and staff are in accord on how to settle this matter, there nonetheless remains between UKI and staff significant disagreement with respect to a material issue of law and policy. Although this issue does not have to be resolved to settle this matter, UKI believes it useful to be clear about it's view of the case.[1]

Specifically, staff characterizes the consumer complaints as slamming complaints - i.e., complaints about unauthorized transfer - because as a general matter the script used by UKI's TPV provider did not comply or could not be shown to comply with the checklist provided in Rule 25-4.118, F.A.C. UKI disagrees. UKI's initial marketing campaigns generated confusion and customer complaints, which UKI regrets. Nevertheless, to the best of UKI's knowledge, no consumer was switched without complying with FCC rules for verifying customer authorization of the switch (i.e., the authorization for each and every conversion was verified by an independent TPV, which authorization was recorded, and no conversion order was issued without verification from the TPV provider that that the conversion was authorized). In short, UKI cannot acquiesce in the charges that it switched any consumer's service without actual or apparent authority from the consumer to do so.

Nature of Consumer Complaints

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 peaked at 33 in November 2001.

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

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[1] UKI would like to emphasize that this is not a complaint about staff, but rather statement of disagreement over a legal issue. Staff has been courteous, professional and even-handed in dealing with UKI, which UKI greatly appreciates.

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.

The complaints mostly relate to confusion around the changing of the customers' preferred IXC. Although there is a tendency to loosely describe these complaints as involving "unauthorized" conversions, this is not accurate. Rather, these were generally complaints about the basis of conversion.

Some customers initially denied that UKI had any authorization to effect the conversion, but this is not unusual in the industry. A review of commission records reflect that typically, a complaint falls into one of three groups: (1) the complainant "did not remember" the authorization, (2) the complainant felt that UKI misrepresented or reneged on the promotional offering, or (3) someone other than the complainant made the authorization.

To reiterate, the initial representations of the consumers notwithstanding, UKI is not aware of a single change made where the FCC TPV process was not followed. So that there is no confusion on this point:

- UKI is not aware of any customer who was switched without authorizing the conversion.
- UKI is not aware of any authorization that was not taped by the TPV provider.
- UKI is not aware of any customer who agreed to the change who did not affirm that he or she was at least 18, a member of the household, and authorized to approve the change.
- UKI is not aware of any consumer alleging that he or she declined service.
- UKI did not submit any carrier change order to an ILEC without first receiving confirmation from the independent TPV that the change was authorized.

The Inadequacy of the TPV Script

Staff is correct that the script used by the independent TPV provider did not meet the conversion checklist in Rules 25-4.118, F.A.C. Specifically, the script did not contain the required items stating that (i) the LEC may charge a fee for each provider change and (ii) the change authorization applies to only one number (e.g., if a consumer has two telephone numbers, there must be two separate authorizations).

As contemplated by the Commission rules, UKI contracted with an independent entity, Federal Verification Company (FVC), to provide third party verification. FVC submitted to UKI a sample of a script that met the applicable requirements of the FCC. UKI approved the use of this script for the verification of all conversions, including those involving Florida customers. UKI did so on the mistaken but good faith belief that the script satisfied Florida requirements. UKI accepts responsibility for this mistake.

The Source of the Complaints

The source of the complaints was customer confusion around the promotional incentives used in UKI's first two marketing campaigns. UKI attempted to win customers by offering low rates *plus* an incentive. Specifically, in one campaign prospects were provided a rate of 7 cents a minute *plus* a calling card good for 1000 free minutes. In the other campaign, the customers were offered the same low rate *plus* a rebate check of $25.00 if they stayed with UKI for 180 days. These "plus" items were, of course, incentives that were designed to stimulate sales. Unfortunately, they also stimulated complaints.

Mostly consumers complained that they did not receive their calling cards or checks soon enough. The company in fact did experience problems in getting the cards to the customers as quickly as it preferred. With respect to the checks, however, the consumer apparently did not apprehend that he or she would receive the check upon staying with the company 180 days. In any event, both groups of complaints can be related to consumer confusion or to the consumer's expectation of immediate reward.

As UKI explained to staff in a meeting, it realized that neither plan was working out and abandoned both. It's useful to recognize here that particularly as a new company, UKI's marketing and sales efforts needed to convert prospects to new customers and new customers to loyal customers. Any plan that creates customer confusion and triggers complaints is simply not good business. This is an area where good business practice and good regulatory practice align. There is no legitimate concern that the customer complaints are the result of marketing intended to make sales by creating customer confusion.

UKI's 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.

What Went Wrong?

So what went wrong? 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.

How Did UKI Respond?

UKI initiated and implemented significant remedial measures before this docket was opened. Perhaps the most dramatic was the suspension of intrastate marketing in June of 2002, some three months before staff's recommendation was filed. This suspension has remained in effect for over a year, the consequences of which dictate cancellation of UKI's certificate in the face of this investigation.

UKI took other steps to address the root causes of its problems. These included contracting with a new TPV provider, improving the training program for sales staff, retaining permanently sales tapes, and changing of Website provider and platform (email bounce-back problem).

Offer of Settlement

Although UKI does not agree that it willfully and knowingly violated any applicable Commission rules, it acknowledges that significant start-up problems in its first year of marketing resulted in customer confusion and complaints. UKI regrets and apologizes for the inconveniences to both consumers and staff. UKI appreciates the opportunity to resolve this matter through settlement so that the burden of formal proceeding may be avoided.

As previously noted, 12 months ago, UKI's management decided to suspende intrastate marketing and not resume until (1) the matters in this docket were resolved, and (2) it was satisfied that the systems it used to market, handle consumers complaints, and respond to regulatory requests were "bulletproof." As events have unfolded, UKI has reluctantly concluded that the only practical avenue to resolving this matter is through cancellation of its certificate and to terminate intrastate business requiring a certificate of public convenience and necessity.

In light of the above, UKI proposes the following settlement:

1. UKI requests cancellation of its certificate within 90 days of a final order approving this offer;
2. UKI agrees that neither UKI nor a successor corporation to UKI will file for a certificate in Florida sooner than 2 years from the date of the final order;
3. UKI agrees that it will continue to address and resolve all pending consumer complaints;
4. The Commission agrees that this settlement, if approved, will be considered a resolution of all allegations of violations occurring as of the date of this letter; and
5. The Commission agrees that this settlement, if approved, will not constitute a finding of wrongdoing.

Thank you for your attention to this matter.

Sincerely

Patrick K. Wiggins
Attorney for UKI Communications, Inc.