

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of 9278 Communications, Inc. for apparent violation of Sections 364.02 and 364.04, Florida Statutes. | DOCKET NO. 030696-TI
ORDER NO. PSC-05-0825-PAA-TI
ISSUED: August 16, 2005

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION
ORDER ACCEPTING SETTLEMENT PROPOSAL

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

During the period from April 10, 2003, through June 11, 2004, this Commission received nine (9) consumer complaints regarding prepaid phone cards for which it appeared that 9278 Communications was the interexchange service provider. As an interexchange company (IXC), 9278 Communications would be subject to Sections 364.02 and 364.04, Florida Statutes, which requires each IXC to provide this Commission with information to contact and communicate with the company and file a tariff. Section 364.02(13), Florida Statutes, states in pertinent part:

Each intrastate interexchange telecommunications company shall continue to be subject to ss. 364.04, 364.10(3)(a), and (d), 364.285, 364.163, 364.501, 364.603, and 364.604, shall provide the commission with such current information as the commission deems necessary to contact and communicate with the company

Section 364.04(1), Florida Statutes, which states:

Upon order of the commission, every telecommunications company shall file with the commission, and shall print and keep open to public inspection, schedules showing the rates, tolls, rentals, contracts, and charges that a company for service to be performed within the state.

On January 12, 2004, this Commission issued a Proposed Agency Action Order imposing a penalty in the amount of \$25,000 upon 9278 Communications for the company's apparent

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violation of Sections 364.02 and 364.04, Florida Statutes. Subsequently, the company protested this Commission's order. Since the time of the protest, our staff was unable to communicate with the company until May 6, 2005. From May 6, 2005, through June 17, 2005, our staff and 9278 Communications' legal counsel negotiated an agreement to resolve the issues in this case. On June 20, 2005, 9278 Communications submitted its settlement and offers the following.

1. 9278 Communications will pay the total sum of \$12,638 to the Florida Public Service Commission as a voluntary contribution to the Florida General Revenue Fund and payment of the cost of collection in three (3) equal payments of \$4,212.66.
2. The first payment will be remitted within ten (10) calendar days after the Commission votes to approve the settlement offer. The second payment will be due thirty (30) calendar days after the first payment, and the final payment will be due sixty (60) days after the first payment.
3. 9278 Communications will resolve the four (4) outstanding consumer complaints by issuing the complainants replacement prepaid phone cards of equal value to the original purchase.
4. 9278 Communications will register as an IXC in Florida, and file a tariff which is part of the registration process.
5. In the event that 9278 Communications is in breach of any of its obligations under the settlement agreement, it shall be given prompt notice of any such default via facsimile with copy to counsel and five (5) business days to cure any such default.

9278 Communications also stated in its settlement offer that its settlement agreement shall not be construed as an admission or evidence that 9278 Communications previously acted or conducted business as an IXC in Florida, and that nothing in the settlement shall be construed as an admission of liability or wrongdoing of any kind, or violation of any laws or statutes, or as evidence thereof.

Further, 9278 Communications requested in its settlement offer that the settlement terms shall be kept confidential to the extent permitted by law. 9278 Communications has not, however, filed a request for confidential classification of material pursuant to Rule 25-22.006, Florida Administrative Code, in which 9278 Communications would have to show that the terms of the settlement agreement are bona fide proprietary confidential business information.

Under 9278 Communications' settlement offer, the payments would be due on the following dates:

- 1st Payment: July 29, 2005.
- 2nd Payment: August 29, 2005.
- 3rd Payment: September 27, 2005.

We previously approved a settlement offer in a docket that involved a similar issue with a prepaid phone card service provider. In Order No. PSC-02-0927-PAA-TI, issued July 10, 2002, Docket No. 011140-TI, 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, we approved the company's settlement offer of \$20,000, to resolve the company's apparent failure to obtain our approval to provide prepaid calling services as an IXC in Florida.

We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.04, and 364.285, Florida Statutes. Accordingly, staff recommends that the Commission accept the settlement offer submitted by 9278 Communications, Inc. to resolve the company's apparent violation of Sections 364.02 and 364.04, Florida Statutes.

Therefore it is hereby

ORDERED by the Florida Public Service Commission that we hereby approve the settlement offer tendered by 9278 Communications, Inc. as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is 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 the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall be closed administratively upon receipt of the final payment and confirmation of compliance. Failure to comply, after action taken in accordance with settlement paragraph 5, will amount to a default. Failure to cure any such default will render the settlement null and void and the docket will remain open.

By ORDER of the Florida Public Service Commission this 16th day of August, 2005.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition 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 September 6, 2005.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.