

State of Florida



ORIGINAL

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: March 20, 2006
TO: Blanca S. Bayó, Commission Clerk and Administrative Services Director
FROM: Dale R. Buys, Regulatory Analyst III, Division of Competitive Markets & Enforcement
RE: Docket No. 030696-TI – Compliance investigation of 9278 Communications, Inc. for apparent violation of Sections 364.02 and 364.04, Florida Statutes.

Please file the attachments listed herein in the above referenced docket file.

1. Letter dated March 7, 2006, from Commission staff.
2. Letter dated March 14, 2006, from Mr. Joseph P. Goldberg.
3. USPS Certified Mail "green card" receipt.

DRB/
Attachments

CMP _____
 COM _____
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 GCL _____
 OPC _____
 RCA _____
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 SGA _____
 SEC 1 _____
 OTH _____

DOCUMENT NUMBER-DATE

02477 MAR 20 06

FPSC-COMMISSION CLERK

COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

STATE OF FLORIDA



DIVISION OF COMPETITIVE MARKETS &
ENFORCEMENT
BETH W. SALAK
DIRECTOR
(850) 413-6600

Public Service Commission

March 7, 2006

CERTIFIED MAIL: 7004 1160 0004 5749 7371
VIA FACSIMILE: 718-792-5130

Mr. Sajid Kapadia
Chairman and CEO
9278 Communications, Inc.
1942 Williamsbridge Road
Bronx, NY 10461

Re: Docket No. 030696-TI – Notice of Breach of obligations under 9278 Communications, Inc.’s settlement agreement.

Dear Mr. Kapadia:

This purpose of this letter is to serve as **NOTICE OF DEFAULT** of 9278 Communications, Inc.’s obligations set forth in its settlement offer approved by the Florida Public Service Commission (Commission) in Order No. PSC-05-0825-PAA-TI, issued August 16, 2005, Docket No. 030696-TI, In Re: Compliance investigation of 9278 Communications, Inc. for apparent violation of Sections 364.02 and 364.04, Florida Statutes.

One of the conditions included in your company’s settlement offer is the requirement for 9278 Communications to register as an interexchange company (IXC) and file a tariff with the Commission. As of the date of this letter, 9278 Communications has not registered as an IXC and filed a tariff in breach of its settlement offer. The Commission’s Order states on page 2 that, “*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.*”

Accordingly, 9278 Communications has five business days upon receipt of this letter to cure the default of its settlement agreement and submit a completed IXC Registration Form and file a tariff. Or in the alternative, 9278 Communications may submit a letter signed by Mr. Sajid Kapadia stating that the company does not currently provide intrastate interexchange telephone service in Florida and that should 9278 Communications decide to offer service in Florida in the future, the company will submit a completed IXC Registration Form and file a tariff prior to providing service as required by Rule 25-24.470, Florida Administrative Code, Registration Required.

Mr. Sajid Kapadia

Page 2

March 7, 2006

Mr. Kapadia, please understand that this docket can not be closed until one of these two actions has been completed by your company. Please contact me with any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Dale R. Buys". The signature is written in a cursive, slightly slanted style.

Dale R. Buys
Regulatory Analyst III
Bureau of Telecommunications Service Quality,
Certification and Enforcement

Tel: (850) 413-6536

Fax: (850) 413-6537

Email: dbuys@psc.state.fl.us

Enclosure: Order No. PSC-05-0825-PAA-TI

cc: Patrick Wiggins

Mr. Joseph P. Goldberg
Hodgson Russ, LLP
60 East 42nd Street
New York, NY 10165
Fax: 212-972-1677

TMS 2120

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

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: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. Go to the Commission's Web site,
<http://www.floridapsc.com> or fax a request to 1-850-413-
7118, for a copy of the order with signature.

(S E A L)

JPR

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

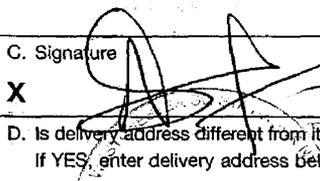
The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests 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.

| SENDER: COMPLETE THIS SECTION | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|---------------------|
| <ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. | A. Received by (Please Print Clearly) | B. Date of Delivery |
| 1. Article Addressed to: Mr. Sajid Kapadia Chairman + CEO 9278 Communications Inc. 1942 Williamsbridge Road Bronx, NY 10461 | C. Signature X  | |
| | D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No | |
| | 3. Service Type <small>USPS 1345</small> <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. | |
| | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes | |
| 2. Article Number <small>(Transfer from service label)</small> | 7004 1160 0004 5749 7371 | |
| PS Form 3811, March 2001 Domestic Return Receipt 102595-01-M-1424 | | |

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 NEW YORK NY 100
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First-Class Mail
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 USPS
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Mr. Dale Buys
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

DIVISION OF
 COMPETITIVE SERVICES
 2006 MAR 20 AM 10:48

0001 

Joseph P. Goldberg
Direct Dial: 212.751.4300
jgoldberg@hodgsonruss.com



2006 MAR 20 AM 10: 53
DIVISION OF
COMPETITIVE SERVICES
March 14, 2006

Via Facsimile and US Mail

Dale R. Buys
Bureau of Telecommunications Service Quality, Certification and Enforcement
State of Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 030696-TI
9278 Communication Inc.

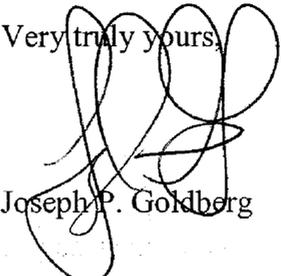
Dear Mr. Buys:

I write on behalf of 9278 Communications, Inc. in response to your letter dated March 9, 2006 concerning the settlement of the above matter.

This is to confirm that 9278 Communications, Inc. does not currently provide intrastate interexchange telephone service in the State of Florida. In the event that 9278 Communications decides to offer service in Florida in the future, 9278 Communications will submit a completed Interexchange Registration Form and file a tariff prior to providing service as requested by Rule 25-24.470, Florida Administrative Code, Registration Required.

Feel free to contact me at (646) 218-7615 should you have any questions or require additional information.

Very truly yours,



Joseph P. Goldberg

JPG/mw

cc: 9278 Communications, Inc.

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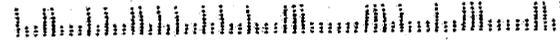
NEW YORK NY 100

15 MAR 2006 PM



Dale R. Buys
Bureau of Telecommunications Service Quality,
Certification and Enforcement
State of Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

32399+7013



Hodgson Russ LLP
60 East 42nd Street
New York, New York 10165