

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Primo Communications, Inc. for apparent violation of Rule 25-24.470, F.A.C., Registration Required. || DOCKET NO. 050838-TI
ORDER NO. PSC-06-0320-AS-TI
ISSUED: April 21, 2006

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING SETTLEMENT PROPOSAL

BY THE COMMISSION:

I. Case Background

Primo Communications, Inc. (Primo) is an interexchange company (IXC) located in Rochester Hills, Michigan. Primo was granted an IXC certificate (Registration No. TJ724) on February 28, 2003. On December 31, 2004, Primo's tariff was cancelled and the company was removed from the register for failing to pay Regulatory Assessment Fees (RAFs), a violation of Section 364.336, Florida Statutes (F.S.).¹ However, the company apparently continued to provide intrastate interexchange telephone service after the cancellation of its tariff and removal from the IXC register. The following timeline illustrates the events that have occurred from October 2005 to the present:

- October 25, 2005 – Docket was opened to address the company's apparent failure to register as an IXC.
- January 10, 2006 – Commission Order No. PSC-06-0026-PAA-TI was issued imposing a penalty in the amount of \$25,000.00 on Primo for its apparent violation of Rule 25-24.470, Florida Administrative Code (F.A.C.).
- January 17, 2006 – Primo filed a protest to Order No. PSC-06-0026-PAA-TI.
- January 30, 2006 – Primo submitted its settlement proposal to resolve its apparent violation of Rule 25-24.470, F.A.C.

¹ See Docket No. 040938-TI, In re: Compliance Investigation of Primo Communications, Inc. for apparent violation of Section 364.336, F.S.

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- March 3, 2006 – Primo filed its RAF returns for calendar years 2003, 2004, and 2005, and paid the delinquent RAFs totaling \$200.50.
- March 3, 2006 – Primo submitted a completed IXC registration form and filed its tariff in Docket No. 060195 - TI.
- March 6, 2006 – Primo’s IXC registration and tariff became effective.

We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.04, and 364.285, F.S.

II. Analysis:

Rule 25-24.470(1), F.A.C., states:

No person shall provide intrastate interexchange telephone service without first filing an initial tariff containing the rates, terms, and conditions of service and providing the company’s current contact information with the Division of the Commission Clerk and Administrative Services.

In a telephone conversation with our staff, Primo acknowledged that it failed to pay its RAFs for the calendar year 2003 due to a management oversight. Consequently, in Docket No. 040938-TI this Commission removed the company from the IXC register and cancelled its tariff. Afterward, the company continued to provide intrastate interexchange telephone service in Florida without a valid tariff and registration in apparent violation of Rule 25-24.470(1), F.A.C.

As stated in the Case Background, on January 10, 2006, we issued Order No. PSC-06-0026-PAA-TI, imposing a \$25,000.00 penalty on Primo for its apparent violation of Rule 25-24.470, F.A.C. Primo protested that Order and subsequently submitted a settlement offer to resolve the matter. As part of its settlement offer, Primo proposes to do the following:

1. Pay the \$500.00 penalty imposed in Order No. PSC-04-1198-PAA-TI, issued December 3, 2004, in Docket No. 040938-TI.
2. Pay RAFs for the calendar years 2003 and 2004, including statutory penalties and interest.²
3. Make a voluntary contribution to the Florida General Revenue Fund in the amount of \$5,000.00 – payable in ten monthly installments of \$500.00 each.
4. Submit a completed IXC registration form and file a tariff.³

² We note that Primo paid all outstanding RAFs for 2003, 2004, and 2005 on March 1, 2006.

³ Primo submitted its IXC registration form and tariff on March 3, 2006.

5. Pledge that in the future Primo will always be compliant with Commission rules, decisions, and requests.

In its settlement offer, Primo stated that it has less than 200 customers in Florida and earns less than \$7,200.00 annually in intrastate revenue. The company further stated that the proposed penalty of \$25,000.00 is unbearable and would potentially put it out of business.

III. Decision

Primo's settlement offer is consistent with settlement offers that this Commission has previously accepted for similar types of apparent rule violations. For example, in Docket No. 030876-TI, In Re: Compliance investigation of IBGH Communications, LLC for apparent violation of Sections 364.02 and 364.04, Florida Statutes, this Commission accepted a settlement offer in the amount of \$5,000.00 for the company's failure to register and file a tariff prior to providing intrastate interexchange service in Florida. Additionally, in Docket No. 020664-TI, In Re: Compliance investigation of bigredwire.com, Inc. for apparent violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries, this Commission accepted the company's settlement proposal in the amount of \$5,000.00, paid in twelve monthly installments, for its failure to comply with Rule 25-24.470, F.A.C.

Accordingly, we hereby accept Primo Communications, Inc.'s settlement proposal to make a voluntary contribution to the Florida General Revenue Fund in the amount of \$5,000.00, to be paid in ten equal monthly installments of \$500.00 to resolve its apparent violation of Rule 25-24.470, F.A.C., and pay the \$500.00 penalty in accordance with Order No. PSC-04-1198-PAA-TI.

Furthermore, Primo is required to pay to this Commission, within fourteen (14) calendar days of the issuance of a Consummating Order, in the amount of \$1000.00 - consisting of (1) the first \$500.00 monthly installment of the company's \$5,000.00 voluntary contribution, and (2) the \$500.00 penalty in accordance with Order No. PSC-04-1198-PAA-TI, which includes RAF collection costs. Within 30 days of receiving Primo's initial payment of \$1,000.00, the company shall be required to submit its second payment in the amount of \$500.00. Thereafter, Primo is required to submit eight monthly payments in the amount of \$500.00 each. Each payment shall be made within 30 day intervals. Payments shall be identified by docket number and company name, and made payable to the Florida Public Service Commission. For the \$500.00 penalty imposed by Order No. PSC-04-1198-PAA-TI, the RAF collection costs will be deducted from the \$500.00 and deposited in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, F.S. Any monetary amount exceeding the RAF collection cost, along with voluntary contribution, will be remitted to the Florida Department of Financial Services for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285(1), F.S.

This Order shall become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by this Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-

106.201, F.A.C., within 21 days of the issuance of this Order. As provided by Section 120.80(13)(b), F.S., any issues not in dispute shall be deemed stipulated.

If Primo Communications, Inc. fails to pay in accordance with its settlement proposal, its tariff shall be cancelled, its name removed from the IXC register, and the company shall be required to immediately cease and desist providing all intrastate telecommunications services in Florida. This Docket shall be closed administratively upon receipt of the final payment of the voluntary contribution or upon cancellation of the company's tariff and removal of its name from the IXC register.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that Primo Communications, Inc.'s settlement proposal as set forth in this Order is hereby accepted. It is further

ORDERED that Primo Communications, Inc. shall make a voluntary contribution to the Florida General Revenue Fund in the amount of \$5,000.00, to be paid in ten equal monthly installments of \$500.00 to resolve its apparent violation of Rule 25-24.470, F.A.C. in the manner set forth in this Order, and pay the \$500.00 penalty in accordance with Order No. PSC-04-1198-PAA-TI. It is further

ORDERED that if Primo Communications, Inc. fails to pay in accordance with its settlement proposal, its tariff shall be cancelled, its name removed from the IXC register, and the company shall immediately cease and desist providing all intrastate telecommunications services in Florida. It is further

ORDERED that this Order shall become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by this Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of this Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute shall be deemed stipulated. It is further

ORDERED that this Docket shall close administratively upon receipt of the final payment of the voluntary contribution or upon cancellation of the company's tariff and removal of its name from the IXC register.

By ORDER of the Florida Public Service Commission this 21st day of April, 2006.

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 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.