

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 930182-TI
proceedings against NATIONAL) ORDER NO. PSC-93-1652-FOF-TI
TELEPHONE COMMUNICATIONS, INC.) ISSUED: November 12, 1993
for violations of Rule 25-)
24.118, F.A.C., Interexchange)
Carrier Selection; and Rule 25-)
4.043, F.A.C., Response to)
Commission Staff Inquiries.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

FINAL ORDER IMPOSING FINE

BY THE COMMISSION:

National Telephone Communications, Inc. (National) has been a certificated interexchange carrier (IXC) since September 13, 1991. As a certificated IXC, National is subject to our jurisdiction pursuant to Chapter 364, Florida Statutes.

Between October 28, 1992 and January 4, 1993 eight consumer complaints were filed with this agency alleging that National had caused eight residential or business customers' long distance carriers to be changed without the customers' knowledge or authorization. This practice sometimes known as "slamming", has long been of concern to us. Slamming is prohibited by Rule 25-4.118(1), Florida Administrative Code which provides "the primary interexchange carrier (PIC) of a customer shall not be changed without the customer's authorization." National failed to respond to fifteen telephone calls and twelve letters from staff including three sent certified mail. Rule 25-4.043, Florida Administrative Code requires "the necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen days from the date of the Commission inquiry.

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Based on the above information, we issued Order No. PSC-93-0665-FOF-TI on April 29, 1993 requiring National to show cause why it should not be fined or in the alternative have its certificate cancelled for the alleged violations. On May 17, 1993, National filed a response to Order No. PSC-93-0665-FOF-TI. The response was filed by Incomnet which had recently acquired National.

Of the eight complaints, National argues that five of the incidents were either not slamming or were inadvertent programming errors. Even assuming this is correct three complaints remain. National asserts that these complaints may have resulted from improprieties on the part of an independent representative. National emphatically insists that none of the complaints resulted from a situation "where service was switched knowingly."

The our authority for imposing a penalty in this case is found at Section 364.285, Florida Statutes. The standard of conduct for a penalty is "willful violation" of a rule Statute or Order. Even if one assumes that by asserting that no service was switched knowingly, that National is asserting that it did not 'willfully' violate a rule, Order or Statute, staff believes that the Company's defense still fails. We have repeatedly ruled that "wilful" implies an intent to do an act, and this is distinct from intent to violate a rule." Thus, if National intended to make the change, it is liable for the resulting violation of the rule.

National also argues that it should not be penalized for violation of Rule 25-4.043 Florida Administrative Code, by failing to respond to Staff inquiries in a timely manner, because the company has been acquired by Incomnet and is now under new management. The Company's argument is premised on the assumption that new management should not be held liable for the failings of the former management. The Company seems to admit to the alleged violations, but argues that the equities favor leniency because of the transfer of control.

That acquisition was in violation of Section 364.33 Florida Statutes.

Incomnet never received approval of the acquisition and accordingly is in apparent violation of Section 364.33. An act that is a violation of a statutory requirement cannot be used as a defense to another alleged violation. Furthermore, National remains a distinct legal entity and any penalty would be levied against National and not its management or parent company.

ORDER NO. PSC-93-1652-FOF-TI
DOCKET NO. 930182-TC
PAGE 3

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that National Telephone Communications, Inc. be fined \$2,000 for violation of Rules 25-24.118, and 25-4.043, Florida Administrative Code. It is further

ORDERED that this docket shall remain open pending collection of the imposed fine.

By ORDER of the Florida Public Service Commission, this 12th day of November, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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

ORDER NO. PSC-93-1652-FOF-TI
DOCKET NO. 930182-TC
PAGE 4

filing a motion for reconsideration with the Director, Division of Records and Reporting 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 or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.