

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against BizNet Communications for 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.

DOCKET NO. 970870-TI
ORDER NO. PSC-97-1046-PCO-TI
ISSUED: September 5, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER TO SHOW CAUSE
AND
NOTICE OF PROPOSED AGENCY ACTION ORDER
DIRECTING CERTIFICATED INTEREXCHANGE
TELECOMMUNICATIONS PROVIDERS TO DISCONTINUE SERVICE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein relative to discontinuation of interexchange telecommunications services 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.

DOCUMENT NUMBER-DATE

08953 SEP-5 97

FPSC-RECORDS/REPORTING

On June 12, our staff called BizNet's regulatory consultant and left a message concerning the company's need to file an application. On June 13, the consultant left a message to contact BizNet at a new number. Our staff called the new number, which was answered by a recording identifying the answering party as "Phone Card Associates." Our staff left a message requesting once again that BizNet file the required application and expeditiously resolve the complaints against it. On July 10, staff again attempted to call BizNet, but this time found that the telephone service was disconnected. Our staff then called BizNet's fax line, which was answered by a recording identifying the answering party as "BizNet." Our staff left a message requesting a return call. As of the date of our decision, BizNet has not responded to these requests.

On July 23, our staff called the 800 access number listed on the debit cards. The call was answered by a recording that stated, "We're sorry, the 800 number you have dialed is not currently active." When our staff called the 800 customer service number on the cards, a recording answered stating, "As you are probably aware, our switch is still being upgraded. We apologize for any inconvenience. Your prepaid cards will be honored as soon as the switch is up. Thank you so much for your patience. Thank you for calling. Good bye."

In all of these circumstances, we find it appropriate to order BizNet to show cause as set forth below.

SHOW CAUSE

Rule 25-24.470, Florida Administrative Code, states, in part:

No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payments for services be collected, until the effective date of a certificate, if granted.

BizNet is listed as the service provider on the prepaid debit cards distributed by 1st Choice. BizNet is not certificated to provide interexchange telecommunications services in Florida. Furthermore, BizNet has failed to file the necessary application

ORDER NO. PSC-97-1046-PCO-TI
DOCKET NO. 970870-TI
PAGE 5

writing within 20 days of this Order why it should not be fined in the amount of \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code. Pursuant to Section 364.285, Florida Statutes, any payment of fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund.

DISCONTINUATION OF UNDERLYING INTRASTATE
INTEREXCHANGE TELECOMMUNICATIONS SERVICES

Rule 25-24.4701(3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited, states:

The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

We have found that it appears that BizNet is operating in Florida without a certificate. Accordingly, if this show cause proceeding is not resolved in favor of BizNet, we instruct all certificated interexchange companies to discontinue providing intrastate long distance service for resale to BizNet at the conclusion of this proceeding. Any certificated interexchange carriers providing service to BizNet must contact the Commission at the conclusion of the response period indicated herein in order to determine the status of this proceeding.

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In re: Initiation of show cause proceedings against BizNet Communications for 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.

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DOCUMENT NUMBER-DATE

08953 SEP-55

FPSC-REGISTRATION/REPORTING

BACKGROUND

On February 19, 1997, our staff received from the State Attorney, First Judicial Circuit of Florida, an information packet related to prepaid debit cards distributed by a company in Pensacola, Florida, 1st Choice Telecom (1st Choice). Our staff sent 1st Choice a letter inquiring about its role in the prepaid debit card business and to ascertain the service provider for the cards. On March 21, 1st Choice responded that BizNet Communications (BizNet) was the 800 service provider for the cards.

Our staff sent a letter requesting information concerning its services to BizNet on March 24. The company failed to respond by the required date, April 8. On April 9, our staff sent a certified letter, requesting the same information by April 29. In the meantime, on April 23, our staff received two complaints about BizNet cards not working. Our staff spoke with the company's president, Seth Fargen, on April 23. Mr. Fargen said that BizNet disconnected service to 1st Choice because it had not paid its bills. He also indicated that BizNet was no longer soliciting prepaid debit cards. He acknowledged, however, that cards were still in circulation. Our staff informed Mr. Fargen that his company, as the service provider, was responsible for the consumer complaints about the lack of service provided through the cards, and that, furthermore, his company needed to be certificated in Florida as an interexchange telecommunications provider.

On April 25, our staff's April 9 certified letter was returned as undeliverable. Our staff then called the BizNet number on file with the Commission and learned that BizNet had a new mailing address. On April 28, our staff sent another certified letter and application to the new address, requesting a resolution of the complaints by May 13 and filing of a completed application by May 28.

BizNet responded to our staff's very first letter on April 29. The company stated that it stopped soliciting prepaid debit cards in November 1996. It requested that future correspondence be directed to its regulatory consultant. The post office verified that the application packet and certified letter of April 28 were received on April 30.

On June 12, our staff called BizNet's regulatory consultant and left a message concerning the company's need to file an application. On June 13, the consultant left a message to contact BizNet at a new number. Our staff called the new number, which was answered by a recording identifying the answering party as "Phone Card Associates." Our staff left a message requesting once again that BizNet file the required application and expeditiously resolve the complaints against it. On July 10, staff again attempted to call BizNet, but this time found that the telephone service was disconnected. Our staff then called BizNet's fax line, which was answered by a recording identifying the answering party as "BizNet." Our staff left a message requesting a return call. As of the date of our decision, BizNet has not responded to these requests.

On July 23, our staff called the 800 access number listed on the debit cards. The call was answered by a recording that stated, "We're sorry, the 800 number you have dialed is not currently active." When our staff called the 800 customer service number on the cards, a recording answered stating, "As you are probably aware, our switch is still being upgraded. We apologize for any inconvenience. Your prepaid cards will be honored as soon as the switch is up. Thank you so much for your patience. Thank you for calling. Good bye."

In all of these circumstances, we find it appropriate to order BizNet to show cause as set forth below.

SHOW CAUSE

Rule 25-24.470, Florida Administrative Code, states, in part:

No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payments for services be collected, until the effective date of a certificate, if granted.

BizNet is listed as the service provider on the prepaid debit cards distributed by 1st Choice. BizNet is not certificated to provide interexchange telecommunications services in Florida. Furthermore, BizNet has failed to file the necessary application

for certification as an interexchange telecommunications provider, despite being advised of its obligation to do so on a number of occasions. Thus, we find that it appears that BizNet has violated Rule 25-24.470, Florida Administrative Code.

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, requires that, "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 (15) days from the date of the Commission inquiry." BizNet failed to respond to numerous staff inquiries and, as just noted, as of the date of our decision has yet to file an application for certification or to respond to the complaints of debit card purchasers. Thus, we further find that it appears that BizNet has also violated Rule 25-4.043, Florida Administrative Code.

By Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful Commission rule or order, or any provision of Chapter 364, Florida Statutes. Utilities are charged with knowledge of our rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, intentional acts, such as BizNet's conduct at issue here, would meet the standard for a "willful violation."

We find that BizNet's apparent conduct in offering telecommunications services without holding a certificate and in failing to respond to staff inquiries has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order it to show cause why it should not be fined, stating that, "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule."

Accordingly, we find that BizNet's apparent violations of Rule 25-24.470, Florida Administrative Code, and Rule 25-4.043, Florida Administrative Code, rise to a level warranting that a show cause order be issued. Therefore, we order BizNet to show cause in

ORDER NO. PSC-97-1046-PCO-TI
DOCKET NO. 970870-TI
PAGE 5

writing within 20 days of this Order why it should not be fined in the amount of \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code. Pursuant to Section 364.285, Florida Statutes, any payment of fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund.

DISCONTINUATION OF UNDERLYING INTRASTATE
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The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

We have found that it appears that BizNet is operating in Florida without a certificate. Accordingly, if this show cause proceeding is not resolved in favor of BizNet, we instruct all certificated interexchange companies to discontinue providing intrastate long distance service for resale to BizNet at the conclusion of this proceeding. Any certificated interexchange carriers providing service to BizNet must contact the Commission at the conclusion of the response period indicated herein in order to determine the status of this proceeding.

ORDER NO. PSC-97-1046-PCO-TI
DOCKET NO. 970870-TI
PAGE 6

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that BizNet Communications shall be required to show cause in writing why it should not be fined \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for violation of Rule 25-4.043, Florida Administrative Code. It is further

ORDERED that any response to the Order to Show Cause filed by BizNet Communications shall contain specific allegations of fact and law. It is further

ORDERED that any response to the Order to Show Cause shall be filed with the Director of the Division of Records and Reporting within 20 days of this Order. It is further

ORDERED that upon receipt of BizNet Communications' response to the Order to Show Cause, and upon its request for a hearing, further proceedings will be scheduled by the Commission, at which time BizNet Communications will have an opportunity to contest the allegations in the body of this Order. It is further

ORDERED that if BizNet Communications fails to file a timely response to the Order to Show Cause, such failure shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that any payment of fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. It is further

ORDERED that, if this show cause proceeding is not resolved in favor of BizNet Communications, all certificated interexchange companies shall discontinue providing intrastate long distance service for resale to BizNet Communications at the conclusion of this proceeding. It is further

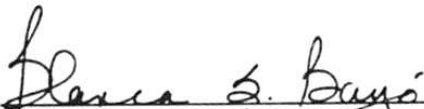
ORDERED that any certificated interexchange carriers providing service to BizNet shall contact this Commission at the conclusion of the response period indicated herein in order to determine the status of this proceeding. It is further

ORDER NO. PSC-97-1046-PCO-TI
DOCKET NO. 970870-TI
PAGE 7

ORDERED that the provision of this Order issued as proposed agency action shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall remain open pending resolution of the order to show cause.

By ORDER of the Florida Public Service Commission, this 5th day of September, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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.

The order to show cause is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the order to show cause may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida

ORDER NO. PSC-97-1046-PCO-TI
DOCKET NO. 970870-TI
PAGE 8

Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 25, 1997. If such a petition is filed, 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.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to the order to show cause within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

As identified in the body of this order, our action concerning the discontinuation of underlying intrastate interexchange telecommunications services to BizNet Communications is proposed agency action. It is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 26, 1997. If such a petition is filed, 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. In the absence of such a petition, this order shall become effective on the date subsequent

ORDER NO. PSC-97-1046-PCO-TI
DOCKET NO. 970870-TI
PAGE 9

to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.