

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 940719-TC
proceedings against VOCAL) ORDER NO. PSC-95-0630-FOF-TC
MOTION, INC. for violation of) ISSUED: May 23, 1995
Rule 25-24.510, F.A.C.,)
Certificate of Public)
Convenience and Necessity)
Required, and Commission Order)
No. 24101.)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER GRANTING REQUEST FOR A FORMAL PROCEEDING

BY THE COMMISSION:

On September 28, 1994, we issued Order Number PSC-94-1184-FOF-TC. That Order directed Vocal Motion, Inc. (Vocal Motion) to: (1) show cause why it should not be fined for operating as a pay telephone company without a Certificate of Public Convenience and Necessity, in violation of Rule 25-24.510, Florida Administrative Code; (2) show cause why it should not be fined charging in excess of the Commission established rate cap in violation of Order 24101; and (3) show cause why it should not be fined for failing to indicate the origination and termination points of a call on its bill, in violation of Rule 25-24.630(1)(d), Florida Administrative Code. The Order stated that a response must be received by the Commission on or before October 18, 1994. Vocal Motion filed a Motion for Extension of Time and a Petition for a Formal Proceeding on October 19, 1994.

On October 18, 1994, Vocal Motion sent to our Division of Legal Services, via facsimile transmission, a Petition for a Formal Proceeding. Our staff informed Vocal Motion that current rules do not allow for filing by facsimile transmission. Vocal Motion filed its pleadings, via overnight mail, on October 19, 1994.

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Vocal Motion's filings are untimely. Rule 25-22.028(4), Florida Administrative Code, states that any action "required by a Commission order shall be completed on the specified date, if any, in the order." Vocal Motion's argument that it has five extra days to file a response because the Order was served by mail fails. However, pursuant to Rule 25-22.036(9)(b)1., Florida Administrative Code, and relevant case law, we may grant a petition for a formal proceeding even if it is untimely. Whether to grant or deny an untimely petition is within our discretion. In this instance, we choose to grant the petition.

Vocal Motion contacted our staff and attempted to file its petition via facsimile transmission on the due date. When it learned that our Rules do not allow for such filings, Vocal Motion sent its pleadings to us via overnight mail. We find that, in this case, it is fair and appropriate to exercise our discretion to grant Vocal Motion's Petition for a Formal Proceeding. This docket shall proceed to hearing. Since we choose to grant the petition, Vocal Motion's Motion for Extension of Time is unnecessary and therefore denied.

It is, therefore,

ORDERED by the Florida Public Service Commission the Petition for a Formal Proceeding by Vocal Motion, Inc. is hereby granted. It is further

ORDERED that this matter shall proceed to hearing. It is further

ORDERED that because we grant Vocal Motion, Inc.'s Petition for a Formal Proceeding, the Motion for Extension of Time filed by Vocal Motion, Inc. is moot and therefore denied.

By ORDER of the Florida Public Service Commission, this 23rd day of May, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kary Hagan
Chief, Bureau of Records

(S E A L)

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