

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceeding against Business Discount Plan, Inc. for violation of Rules 25-4.118 and 25-4.043, F.A.C.

DOCKET NO. 970420-TI
ORDER NO. PSC-97-0783-AS-TI
ISSUED: July 1, 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 APPROVING SETTLEMENT

BY THE COMMISSION:

BACKGROUND

On May 4, 1994, this Commission granted Trans National Telephone, Inc. Certificate No. 3548 to provide intrastate interexchange telecommunications service. On March 23, 1995, we granted the company a name change to Business Discount Plan, Inc. (BDP).

Between April 24, 1996, and February 28, 1997, we received 90 complaints from consumers concerning unauthorized carrier changes that involved BDP. As of March 1, 1997, our staff had processed 76 of the cases as violations of Rule 25-4.118, Florida Administrative Code. In each case, the unauthorized change involved telemarketing with third party verification. In 72 of the 76 cases, BDP did not respond to our staff's inquiries in a timely manner as required by Rule 25-4.043, Florida Administrative Code.

We initiated this proceeding against BDP to show cause why it should not be fined or have its certificate canceled for slamming violations and not responding timely to staff inquiries. On May 7, 1997, our staff filed a recommendation. Thereupon, the company

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requested a deferral to permit it time to draft a settlement offer. At the May 19, 1997 agenda conference we granted the requested deferral.

On May 20, 1997, the company submitted a draft settlement offer. On May 21, 1997, our staff requested that the company make changes to the settlement offer and submit copies of the company's sales and third party verification scripts, as well. On May 23, 1997, the company submitted the scripts and a revised draft settlement offer. On May 27, 1997, our staff requested that the company make changes to the scripts and submit a signed settlement offer.

SETTLEMENT

BDP submitted a signed settlement offer, entitled "Assurance of Voluntary Compliance," on May 27, 1997. See Attachment A. The offer is summarized as follows:

- (1) BDP would admit no wrongdoing.
- (2) BDP would pay \$25,000 in settlement for alleged violation of Rule 25-4.118, Florida Administrative Code, concerning the sale of intrastate interexchange telecommunications service prior to May 7, 1997, and for alleged violation of Rule 25-4.043, Florida Administrative Code, concerning timely responses to staff inquiries logged prior to May 7, 1997.
- (3) BDP would refund switch fees and rerate charges of any Florida consumer who initiates a complaint to BDP directly, or through a BDP affiliate, or through any governmental agency.
- (4) All BDP telephone solicitation would comply with State and Federal requirements, with clear disclosure that "the contact is being made to solicit the

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customer to change their current long distance carrier to Business Discount Plan, Inc."

Upon consideration, we find that the settlement offer is reasonable and that it adequately addresses our concerns with the slamming complaints against BDP. The revisions to the sales and verification scripts reflect more accurately the telecommunications service the company is selling. If, however, we fail to see a substantial reduction in the number of verified complaints, we may initiate a further proceeding to investigate why compliance has not been achieved. Accordingly, we find it appropriate to approve BDP's settlement offer. Upon receipt by this Commission, the \$25,000 payment in settlement shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285, Florida Statutes.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the settlement proposed by Business Discount Plan, Inc., in resolution of the instant show cause proceeding, which is attached to this Order as Attachment A and is incorporated herein by reference, is approved. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 1st day of July, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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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 Records and Reporting, 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 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

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3. Withdrawal of Proceeding:

Upon acceptance and approval of this AVC by the FPSC, and receipt of the Twenty Five Thousand Dollar (\$25,000.00) settlement offer, FPSC shall withdraw its recommendation to proceed with the Show Cause Proceeding and Docket No. 97-0420-TI shall be closed. This AVC shall be deemed to apply as a settlement, compromise, and release with regard to any and all sales of intrastate interexchange telecommunication service by BDP through May 7, 1997. Specifically, the FPSC agrees to not initiate any Show Cause Proceeding for alleged violation of Rule 25-4.118 of the Florida Administrative Code, Interexchange Carrier Selection, for any sale of intrastate interexchange telecommunication service by BDP prior to May 7, 1997. Additionally, FPSC agrees that it shall not initiate any Show Cause Proceeding for alleged violation of 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, concerning any inquiry made by the FPSC to BDP prior to May 7, 1997.

4. Customer Restitution:

Immediately upon acceptance and approval of this AVC by FPSC, and in compliance with Florida Statutes and Administrative Code, BDP shall refund or credit to any Florida customer who initiates a complaint (whether the complaint is made directly to BDP, a BDP affiliate, or any governmental agency) of unauthorized conversion of telephone services the full amount of any charges incurred as a result of an unauthorized conversion of telephone service for: (1) Any charges imposed by the local exchange carrier for the unauthorized switch and restoration to the preferred long distance provider; and (2) The amount, if any, by which BDP's long distance charges exceed the amount which the customer would have been charged by their existing long distance carrier if the unauthorized switch had not occurred.

5. Assurance of Future Compliance:

Effective immediately upon execution of this AVC, BDP agrees to adhere to each of the following requirements:

A. All future solicitations for telephone services conducted by BDP in Florida shall comply with all applicable Federal and Florida Regulations and Statutes, including, but not limited to, 47 C.F.R. 64.1100, and Rules 25-4.118 and 25-4.043, F.A.C.

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B. In connection with any telemarketing solicitation and/or third-party verification of a Florida customer to switch long distance telephone service, BDP and its agents shall clearly disclose that the contact is being made to solicit the customer to change their current long distance carrier to Business Discount Plan, Inc.

DATED: 5.27.97

BUSINESS DISCOUNT PLAN

By: Thomas David Jenkins
THOMAS DAVID JENKINS
President