

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation
of IBGH Communications, LLC for
apparent violation of Sections
364.02 and 364.04, Florida
Statutes.

DOCKET NO. 030876-TI
ORDER NO. PSC-03-1444-PAA-TI
ISSUED: December 22, 2003

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER FOR APPARENT VIOLATION OF
SECTIONS 364.02 and 364.04, FLORIDA STATUTES

BY THE COMMISSION:

I. CASE BACKGROUND

On May 9, 2003, our staff received a complaint regarding a prepaid phone card. The prepaid calling services provider listed on the card was IBGH Communications, LLC (IBGH). Our staff determined that IBGH had not obtained a certificate of public convenience and necessity (certificate). At that time, our rules required that intrastate interexchange telecommunications companies (IXCs) providing services within the state obtain a certificate.

On May 20, 2003, our staff mailed a certified letter to IBGH requesting that the company investigate the complaint filed against it. Within that letter, our staff also notified the company of its requirement to obtain an IXC certificate. The deadline for IBGH to submit the IXC certificate application was June 16, 2003. According to the certified mail receipt, this letter was received by IBGH on May 28, 2003.

DOCUMENT NUMBER-DATE
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On July 21, 2003, our staff mailed a second certified letter to IBGH to inform the company of the changes in the Florida law that no longer require IXCs providing services within the state to obtain a certificate. This letter also informed the company that despite these changes, the law does still require IXCs providing services within Florida to file a tariff and to provide the company's current contact information to this Commission. According to the certified mail receipt, the letter was received by IBGH on July 28, 2003. IBGH was required to submit the requested information by August 4, 2003.

On September 2, 2003, our staff opened this docket to address IBGH's apparent violation of Sections 364.02 and 364.04, Florida Statutes.

On September 29, 2003, our staff received a fax from IBGH's attorney, Mr. Patrick Crocker, Esq., requesting a deferral of this docket from the September 30, 2003, Agenda in order to allow additional time for IBGH to comply with Sections 364.02 and 364.04, Florida Statutes.

On October 14, 2003, our staff held a conference call with Mr. Crocker to discuss the issues addressed in this docket. After the conference call, our staff faxed and mailed a follow up letter to Mr. Crocker. The letter restated the issues discussed during the call. IBGH was required to submit a proposed settlement offer by October 22, 2003, to resolve the apparent violation of Sections 364.02 and 364.04, Florida Statutes. The company was also required to file a tariff, register with this Commission, and resolve the customer complaint by November 3, 2003.

On October 22, 2003, our staff received a proposed settlement offer from IBGH via facsimile. A few weeks later, on November 4, 2003, the original settlement offer letter was received by our staff along with the company's IXC registration, tariff, and the company's response to the customer's complaint. These items are all included in the docket file identified as Document No. 10954. Docket No. 031032-TI was also opened to acknowledge IBGH's registration as an IXC and the company was assigned registration number TJ855.

We are vested with jurisdiction over this matter pursuant to Sections 364.02(13), 364.04, and 364.285, Florida Statutes. Further, our staff's recommendations are consistent with our previous actions in dockets for similar types of apparent rule violations, such as, the failure to obtain a certificate. Accordingly, our staff believes the following recommendations are appropriate.

II. IBGH's Proposed Settlement

We accept IBGH's proposed settlement offer of \$5,000 to be deposited into the General Revenue Fund for apparent violation of Sections 364.02 and 364.04, Florida Statutes. The payment will be received by this Commission within fourteen calendar days after the issuance of the Consummating Order and will identify the docket number and the company's name. This Commission will also forward the payment to the Department of Financial Services for deposit into the General Revenue Fund. If the company fails to pay in accordance with its proposal, then the company's tariff will be canceled and registration number TJ855 will be removed from the register. If the company's tariff is canceled and registration number TJ855 is removed from the register, then the company will be required to immediately cease and desist providing intrastate interexchange telecommunications services in Florida.

III. Analysis

As outlined above in the case background, our staff determined that IBGH was providing intrastate interexchange telecommunications services within the state. Our staff then notified IBGH, via certified mail, of its requirement to obtain an IXC certificate. After not receiving an IXC certificate application from IBGH, our staff sent a second certified letter to the company. This letter was sent after the passage of the Tele-Competition Innovation and Infrastructure Enhancement Act (Tele-Competition Act) and informed the company that it was no longer required to obtain an IXC certificate, but it was still required to file a tariff and to provide the company's current contact information to this Commission. Our staff requested that IBGH file a tariff and provide the company's current contact information to this Commission by August 4, 2003. After not receiving a response to the second letter, our staff opened this docket to recommend that

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this Commission impose a penalty of \$25,000 upon IBGH for its apparent violation of Sections 364.02 and 364.04, Florida Statutes.

On September 29, 2003, IBGH requested that this docket be deferred from the September 30, 2003 Agenda to allow the company additional time to comply with Sections 364.02 and 364.04, Florida Statutes. To resolve the apparent violation of Sections 364.02 and 364.04, Florida Statutes, the company proposed a settlement of \$5,000. The settlement offer was submitted to our staff on October 22, 2003. IBGH also agreed to register with this Commission and file a tariff. The company's registration form and tariff were received by this Commission and Docket No. 031032-TI was opened to acknowledge the registration of IBGH as an intrastate interexchange telecommunications company on November 4, 2003. In addition to that, the company has also resolved the customer complaint that initiated this matter.

The monetary amount of IBGH's settlement proposal is consistent with settlement offers that this Commission has accepted for similar types of apparent rule violations, such as, the failure to obtain a certificate. Further, the company has resolved the customer complaint that initiated this matter, and in Docket No. 031032-TI, this Commission acknowledged that the company is registered as an intrastate interexchange telecommunications company and has filed a tariff. Therefore, our staff believes that IBGH has taken the necessary actions to correct the problems causing the apparent violation of Sections 364.02 and 364.04, Florida Statutes and this Commission shall accept the company's settlement proposal.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this docket will remain open pending the receipt of the \$5,000 settlement payment from IBGH Communications, LLC. Upon receipt of the payment, the money shall be forwarded to the Division of Financial Services to be deposited into the General Revenue Fund, and this docket will be closed administratively. However, if the company fails to make a timely payment, this docket will be closed administratively upon the cancellation of the company's tariff and

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the removal of the company's registration number from the register.
It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 22nd Day of December, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

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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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 12, 2004.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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