

Talbott
Vandiver

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

RECEIVED

August 28, 1997

AUG 27 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO) reporting

FROM: DIVISION OF LEGAL SERVICES (CULPEPPER) KB
DIVISION OF COMMUNICATIONS (BIEGALSKI) KB

RE: DOCKET NO. 970845-TI - INITIATION OF SHOW CAUSE
PROCEEDING AGAINST NEW WAY COMMUNICATIONS FOR VIOLATION
OF RULE 25-24.470, FLORIDA ADMINISTRATIVE CODE,
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED,
AND RULE 25-4.043, FLORIDA ADMINISTRATIVE CODE, RESPONSE
TO COMMISSION STAFF INQUIRIES.

AGENDA: 09/09/97 - REGULAR AGENDA - ISSUE 1 SHOW CAUSE -
ISSUE 2 - PROPOSED AGENCY ACTION - INTERESTED
PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\970845TI.RCM

CASE BACKGROUND

Staff received information that New Way Communications (New Way) may be providing debit card services without a certificate from this Commission (Attachment A, Page 6). In addition, staff received a complaint from Mr. Mike Lopez regarding the Phone Express card issued by New Way. On March 14, 1997, staff sent a certified letter to New Way requesting a written response regarding the complaint and certification issue by March 31, 1997. The letter was returned to staff stamped "Moved, Left no Address" (Attachment B, Page 7).

Staff attempted unsuccessfully to contact New Way by the telephone number listed on the prepaid debit card. The number had been disconnected. Staff could not locate another address or telephone number for New Way.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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Due to the fact New Way has not responded to staff inquiries, we cannot determine whether certification is required. Therefore, we believe the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order New Way Communications to show cause in writing why a fine of \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for violation of Rule 25-4.043, Florida Administrative Code, should not be assessed?

RECOMMENDATION: Yes. Due to the fact that New Way Communications is unresponsive to staff inquiries, and it appears that New Way Communications is providing telecommunications service without a certificate, staff believes the Commission should require New Way to show cause in writing within 20 days of the issuance of the Commission's Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response must contain specific allegations of fact or law. If New Way fails to respond to the show cause, the fine will be deemed assessed. If the fine is not paid after reasonable collection efforts by the Commission, it should be forwarded to the Office of the Comptroller for collection. If the fine is paid, it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (Biegalski)

STAFF ANALYSIS: Rule 25-24.470, Florida Administrative Code, states:

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 payment for services be collected, until the effective date of a certificate, if granted. However, acquisition of equipment and facilities, advertising and other promotional activities may begin prior to the effective date of the certificate at the applicant's risk that it may not be granted. In any customer contacts or advertisements prior to

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certification, the applicant must advise the customer that certification has not and may never be granted.

On January 29, 1997, the staff received a complaint regarding the Phone Express card issued by New Way Communications. Staff mailed a letter to New Way Communications informing it of its responsibility to obtain a certificate in order to provide debit card services. Staff requested a response date of March 11, 1997. This letter was returned by the U.S. Postal Service stamped "Forwarding Order Expired". On March 14, 1997, staff mailed a second certified letter to New Way. This letter was returned stamped "Moved, Left No Address". To date, staff has not received a response from New Way.

New Way is listed as the service provider on the Phone Express card staff received; therefore, it appears that New Way has violated Rule 25-24.470, Florida Administrative Code, by offering telecommunications service without a certificate. In addition, the 800 access and customer service number have been disconnected.

Pursuant to Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, "...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." It has been well over 15 days and New Way has not responded to Commission staff inquiries regarding certification or complaints.

In previous dockets involving companies operating without a certificate and not responding to staff inquiries, fines and settlements have ranged up to \$40,714. In this regard, staff believes that a fine of \$25,000 for operating without a certificate, and a fine of \$10,000 for failure to respond to staff inquiries is appropriate. Therefore, due to the fact that New Way is unresponsive to staff inquiries, and it appears that New Way is providing telecommunications service without a certificate, staff recommends that the Commission issue a show cause order.

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ISSUE 2: Should the Commission order all certificated interexchange companies (IXCs) to discontinue providing interexchange telecommunications service to New Way, pursuant to Rule 25-24.4701(3), Florida Administrative Code?

RECOMMENDATION: Yes. It appears that New Way may be operating in Florida without a certificate in violation of Rule 25-24.470, Florida Administrative Code. The order should state that any IXC providing service to the company must contact the Commission at the conclusion of the show cause response period to determine if the show cause proceeding has been concluded. (Biegalski)

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

(3) 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.

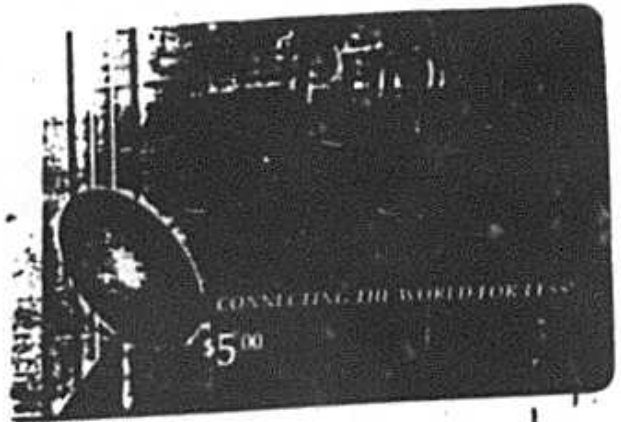
It appears that New Way may be operating in Florida without a certificate. Accordingly, staff recommends that the Commission order all certificated IXCs to discontinue providing intrastate long distance service for resale to this company at the conclusion of the show cause proceeding. If the company is operating as a distributor, it should not have ordered 800 number network access; therefore the actions will not affect a distributor's business. The Order should state that any IXC providing service to the company must contact the Commission at the conclusion of the show cause response period to determine if the show cause proceeding has been concluded.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, an Order to Show Cause will be issued. If New Way timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. The docket should also remain open to process any protest to Issue 2 that may be filed within 21 days of the issuance of the Order by a person whose substantial interests are affected by the Commission's Proposed Agency Action. If New Way does not respond to the Commission's Order to Show Cause, the fine should be assessed. If no timely protest of Issue 2 is filed and New Way fails to respond to the Order to Show Cause, this docket may be closed.

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, an Order to Show Cause will be issued. If New Way timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. The docket should also remain open pending the resolution of any protest to Issue 2 that may be filed within 21 days of the issuance of the Order by a person whose substantial interests are affected by the Commission's Proposed Agency Action. If New Way does not respond to the Commission's Order to Show Cause, the fine should be assessed. If no timely protest of Issue 2 is filed and New Way fails to respond to the Order to Show Cause, this docket may be closed.



Dialing Instructions

1. Dial 1-800-411-6488
2. When prompted, enter your card number

3. For calls within the U.S., to Canada or the Caribbean
Dial 1+ area code and telephone number
For calls to any other country,
dial 011, country code, city code
and telephone number.

- To make another call, don't hang up.
Press **2** button for two seconds.
*You Must Use A Touch Tone Phone.
Customer Service # 1-800-411-6488
New York Comm. NY, NY

Instrucciones para marcar

1. Marque 1-800-411-6488
2. Cuando se le indique, marque los números

3. Para llamar dentro de los Estados Unidos, a Canadá o al Caribe
Marque 1 + el código de área + número telefónico.
Para llamar a cualquier otro país
Marque 011 + código del país + código de la ciudad + número telefónico.

- Para hacer otra llamada, no cuelgue.
Marque **2** por dos segundos.

663 480 0030

State of Florida
Public Service Commission

2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

CERTIFIED

P 263 571 618

MAIL

More left to add

New Way Communications
300 Fifth Avenue, #805
New York, NY 10018

More left to add

32399-0850

