

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Cendant Membership Services, Inc. For violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required.

DOCKET NO. 980675-TI
ORDER NO. PSC-98-1090-SC-TI
ISSUED: August 12, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE
AND
NOTICE OF PROPOSED AGENCY ACTION ORDER
REQUIRING REFUNDS, REQUIRING INTEREXCHANGE TELECOMMUNICATIONS
COMPANIES TO DISCONTINUE SERVICE TO CENDANT MEMBERSHIP SERVICES,
INC. (CENDANT), REQUIRING LOCAL EXCHANGE TELECOMMUNICATIONS
COMPANIES TO CEASE BILLING FOR CENDANT,
AND REQUIRING CENDANT TO CEASE ALL BILLING IN FLORIDA

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the portions of this action that are in addition to the Order to Show Cause are 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

08568 AUG 12 88

FPSC-RECORDS/REPORTING

BACKGROUND

On May 13, 1998, the Attorney General's Office forwarded to the Public Service Commission (Commission) a consumer complaint regarding possible deceptive practices involving Cendant Membership Services, Inc. (Cendant). The complaint included a copy of a check for \$4.95 which, when endorsed by the consumer, obligates the consumer to a \$6.99 monthly fee for a card called AutoVantage Gold (AVG) offering automobile services, various other discounts and a discounted calling card. On the back of the check, in fine print, the endorser agrees to be automatically billed on his local exchange telephone bill. We believe that few consumers who endorse the check realize they are obligating themselves to a \$6.99 monthly recurring charge, calling card charges at \$.30 per minute and a surcharge of \$.30 per call. We also believe these activities of Cendant may constitute "cramming" of unauthorized charges on local phone bills.

Investigation of the initial complaint against AVG determined that AVG appears to be a card issued by Cendant in AVG's name. Neither Cendant nor AVG are certificated to provide telecommunications services in the State of Florida. When contacted on May 19, 1998, Cendant admitted to doing business in Florida, and requested an application; however, by the date of our Agenda Conference wherein we addressed these matters Cendant had not filed its application for a certificate.

ALLEGED VIOLATIONS

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 certification, the applicant must advise the

customer that certification has not and may never be granted.

Based upon the written documentation received, and Cendant's acknowledgment that it is offering discount calling cards in Florida, Cendant appears to be in violation of Rule 25-24.470, Florida Administrative Code, by offering telecommunications services without a certificate. Moreover, the "check" does not advise customers that certification has not and may never be granted.

SHOW CAUSE

Pursuant to 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 rule or order of the Commission, or any provision of Chapter 364, Florida Statutes, or revoke any certificate issued by it for any such violation. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is 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). Accordingly, we hereby order Cendant to show cause in writing within twenty (20) days of the date of this Order why it should not be fined \$25,000 for its apparent violation of Rules 25-24.407, Florida Administrative Code. Failure to respond in a timely manner shall constitute an admission of the violations described above, waiver of the right to a hearing, and will result in the assessment of the fine.

The company's response must contain specific allegations of fact or law. If Cendant fails to respond timely to this Show Cause Order, the fine shall be deemed assessed. If the fine is not paid within five business days after the expiration of the show cause response period after reasonable collection efforts by the Commission, it shall 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.

PROPOSED AGENCY ACTION

A. BILLING

Based on our conclusion above that Cendant appears to be operating in violation of Rule 25-24.470, Florida Administrative

Code, and inasmuch as Cendant's entry form appears to be deliberately deceptive, Cendant is hereby ordered to cease all billing in Florida until authorized to do so by this Commission. Cendant must obtain certification from this Commission before initiating any billing of charges in Florida.

B. INTEREXCHANGE TELECOMMUNICATIONS COMPANIES (IXCs)

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.

Based on our conclusion that Cendant appears to be operating in Florida without a certificate, we find it appropriate to order all certificated IXCs to discontinue providing intrastate long distance service for resale to this company at the conclusion of the show cause proceeding. Any IXC should contact the Commission at the conclusion of the show cause response period set out in this Order to determine if the show cause proceeding has been concluded.

C. LOCAL EXCHANGE TELECOMMUNICATIONS COMPANIES (LECs)

Because Cendant has sufficient information with each entry form to submit charges to local exchange telecommunications (LECs), we believe Cendant may ultimately charge Florida subscribers based on the entry forms it has already collected. Accordingly, we find it appropriate to order all LECs not to bill any customers in Florida on behalf of Cendant until such time as Cendant is certificated.

D. REFUNDS

Rule 25-4.114 (3), Florida Administrative Code, Refunds, states in part:

(3) Basis of Refund. However, where the refund is not related to specific rate changes, such as a refund for overearnings, the refund shall be made to customers of record as of a date specified by the Commission. Customer of record refund refers to a refund to every customer receiving service as of a date specified by the Commission.

Rule 25-4.114 (4) (d), Florida Administrative Code, Refunds, states in part:

(4) Interest. (d) Interest multiplier. When the refund is computed for each customer, an interest multiplier may be applied against the amount of each customer's refund in lieu of a monthly calculation of the interest for each customer.

Cendant apparently offered customers a discounted calling card without a certificate or an established tariff. Therefore, we find it appropriate to order Cendant to make refunds with interest, calculated pursuant to the above-cited rule. Refunds shall be made to all Florida customers on the monthly recurring charge, calling card charges, and the per call surcharge.

Refund reports, pursuant to Rule 25-4.114(7), Florida Administrative Code, shall be filed in accordance with the rule.

CONCLUSION

If no timely protest to the proposed agency action portions of this Order are filed and Cendant fails to respond timely to this Order to Show Cause, this docket may be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Cendant Membership Services, Inc., shall show cause in writing within 21 days of the issuance of this Order why it should not be fined

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\$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and will result in the automatic assessment of the appropriate fine. It is further

ORDERED that Cendant Membership Services, Inc. shall cease all billing in Florida until authorized to do so by the Public Service Commission and shall obtain certification from the Public Service Commission before initiating any billing of charges in Florida. It is further

ORDERED that all Interexchange Telecommunications Companies shall discontinue providing service to Cendant Membership Services, Inc., at the conclusion of this show cause proceeding. It is further

ORDERED that all Local Exchange Telecommunications Companies shall stop billing for Cendant Membership Services, Inc., until such time as certification is granted. It is further

ORDERED that Cendant Membership Services, Inc., shall refund with interest all monies collected from customers in Florida for the monthly recurring charge, calling card charges and per call surcharge. Refunds and the refund report are to be made pursuant to Rule 25-4.114, Florida Administrative Code. It is further

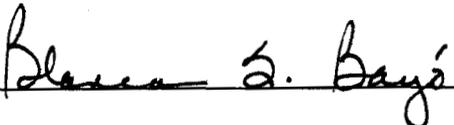
ORDERED that the portions of this Order which require Interexchange Telecommunications Companies to discontinue providing services to Cendant Membership Services, Inc., Local Exchange Telecommunications Companies to cease billing for Cendant Membership Services, Inc., Cendant Membership Services, Inc., to cease all billing in Florida, and Cendant Membership Services, Inc., to issue refunds are issued as Proposed Agency Action and 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

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ORDERED that this docket shall remain open pending the resolution of the show cause process or any protest to the Proposed Agency Action portions of this Order. It is further

ORDERED that in the event the Proposed Agency Action portions of this Order become final, and Cendant Membership Services, Inc., fails to respond to the Order to Show Cause as prescribed herein, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 12th Day of August, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CB

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 show cause portion of this Order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this Show Cause Order may file a response within 20 days of issuance of the Show Cause Order as set forth herein. This response must be received by the Director, Division

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of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 1, 1998.

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 and a default pursuant to Rule 28-106.111(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 show cause portion of this Order 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 requiring refunds, requiring Interexchange Telecommunications Companies to discontinue service to Cendant Membership Services, Inc., requiring Local Exchange Telecommunications Services Companies to cease billing for Cendant Membership Services, Inc., and requiring Cendant Membership Services, Inc., to cease all billing in Florida, 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 Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 2, 1998. 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 to the above date.

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.

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If the proposed agency action portions of this Order become 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.

RECEIVED-FPSC

M E M O R A N D U M

98 AUG 11 PM 3:57

August 11, 1998

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BEDELL) *CB Dr fanned*

RE: DOCKET NO. 980675-TI - Initiation of show cause proceedings against Cendant Membership Services, Inc. For violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required.

98-1090-5C

Attached is an ORDER TO SHOW CAUSE AND NOTICE OF PROPOSED AGENCY ACTION ORDER REQUIRING REFUNDS, REQUIRING INTEREXCHANGE TELECOMMUNICATIONS COMPANIES TO DISCONTINUE SERVICE TO CENDANT MEMBERSHIP SERVICES, INC. (CENDANT), REQUIRING LOCAL EXCHANGE TELECOMMUNICATIONS COMPANIES TO CEASE BILLING FOR CENDANT, AND REQUIRING CENDANT TO CEASE ALL BILLING IN FLORIDA to be issued in the above-referenced docket. (Number of pages in order - 9)

CB/slh
Attachment
cc: Division of Communications (Yambor)
I:980675or.cb

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Requisition for Photocopying and Mailing

Date 8/14/98

Number of Originals 11
Requested By ESM/ats

Copies Per Original 621

Item Presented

Agenda For (Date) _____ Order No. 98-1090 In Docket No. 980675 IT
 Notice of _____ For (Date) 98-1090A In Docket No. _____
 Other _____

Special Handling Instructions

ALSO INCLUDE 08590-98 TO ALL EXCS 604 LABELS/DOCUTECH

Distribution/Mailing

Number	Distributed/Mailed To	Number	Distribution/Mailed To
<u>17</u>	<u>Commission Offices</u>	<u>604</u>	<u>EXCS</u>
<u>12</u>	<u>Docket Mailing List - Mailed</u>		
	<u>Docket Mailing List - Faxed</u>		

Note: Items must be mailed and/or returned within one working day after issue unless specified here.

Print Shop Verification

Job Number 107 Verified By Michael
 Date and Time Completed 8/14 Job Checked For Correctness and Quality (Initial) _____

Mail Room Verification

Date Mailed 8/14/98 Verified By ADJ

ESC/RAR/2(2/91)

Only 98-1090 mailed certified / RAR