

STATE OF FLORIDA

Commissioners:
JOE GARCIA, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER



STEVE TRIBBLE, DIRECTOR
DIVISION OF ADMINISTRATION
(850) 413-6330

Public Service Commission

May 24, 2000

Mr. Bob Joyce
Bureau of Accounting
Office of the Comptroller
101 East Gaines Street
Tallahassee, Florida 32399-0350

Dear Mr. Joyce:

The Public Service Commission has exercised reasonable efforts to collect fines from the companies referenced below. However, no responses have been received, and we believe that further collection efforts would not be cost effective.

DOCKET NUMBER	UTILITY NAME	AMOUNT
970870-TI	Biznet Communications	\$35,000
971306-TI	Heartline Communications	\$25,500

We respectfully submit the enclosed Delinquent Accounts Receivable Transmittal form, along with a memorandum from the Commission's Division of Legal Services and other supporting documentation. We request that, at your discretion, you either attempt further collection or grant this agency permission to write off the debt.

Sincerely,

Steve Tribble
Steve Tribble

ST:EHS:RLM
I:DELACT.EHS
Enclosures

- APP _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- LEG _____
- OPC _____
- PAI _____
- RGO _____
- SEC _____
- SER _____
- OTH _____

- cc: Division of Legal Services
- Division of Records and Reporting
- Division of Regulatory Oversight (Pruitt)
- Division of Competitive Services (Lewis)
- Division of Administration (Sewell)

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DOCUMENT NUMBER-DATE

06431 MAY 24 8

FPSC-RECORDS/REPORTING

**STATE OF FLORIDA
OFFICE OF THE COMPTROLLER
BUREAU OF AUDITING
DELINQUENT ACCOUNTS RECEIVABLE TRANSMITTAL**

(PLEASE PRINT OR TYPE)

AGENCY: FLORIDA PUBLIC SERVICE COMMISSION

DATE: 1/6/98

CONTACT: EVELYN H. SEWELL, CHIEF, BUREAU OF FISCAL SERVICES

PHONE NUMBER: 413-6263

SAMAS ACCOUNT CODE:

61 74 1 000331 610000 00 001200

None
970870-TI

BIZNET COMMUNICATIONS

AGENCY REFERENCE #	LAST NAME	FIRST	MIDDLE	SOCIAL SECURITY NUMBER	COMPTROLLER USE ONLY
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9441 E. 31st. St., No. 207, Tulsa, Oklahoma 74145

LAST KNOWN ADDRESS (INCLUDE ZIP)

\$35,000

HOME TELEPHONE	WORK TELEPHONE	PRINCIPLE AMOUNT	PENALTY/INTEREST AMOUNT	TOTAL
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§ 364.285 F.S.

12/10/97

8

PENALTY/INTEREST AUTHORITY	DATE DEBT INCURRED	DEBT TYPE
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FINES FOR VIOLATION OF RULES 25-4.043, 25-24.470, F.A.C.

DEBT DESCRIPTION, e.g., DRIVER LICENSE, SALARY OVERPAYMENT, PROPERTY DAMAGE

ADDITIONAL INFORMATION, e.g., DATE OF BIRTH, DRIVER LICENSE NUMBER, ETC.

**STATE OF FLORIDA
OFFICE OF THE COMPTROLLER
BUREAU OF AUDITING
DELINQUENT ACCOUNTS RECEIVABLE TRANSMITTAL**

(PLEASE PRINT OR TYPE)

AGENCY: FLORIDA PUBLIC SERVICE COMMISSION

DATE: 1/6/98

CONTACT: EVELYN H. SEWELL, CHIEF, BUREAU OF FISCAL SERVICES

PHONE NUMBER: 413-6263

SAMAS ACCOUNT CODE: 61 20 2 301001 610000 00 310200
 61 20 2 573003 610000 00 000300
 61 74 1 000331 610000 00 001200

TI188
971306-TI

HEARTLINE COMMUNICATIONS, INC.

AGENCY REFERENCE #	LAST NAME	FIRST	MIDDLE	SOCIAL SECURITY NUMBER	COMPTROLLER USE ONLY
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PO BOX 53029, HOUSTON , TEXAS 77502-3029

LAST KNOWN ADDRESS (INCLUDE ZIP)

HOME TELEPHONE	WORK TELEPHONE	PRINCIPLE AMOUNT	PENALTY/INTEREST AMOUNT	TOTAL
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\$25,500

§ 364.285 F.S.

12/26/97

8

PENALTY/INTEREST AUTHORITY	DATE DEBT INCURRED	DEBT TYPE
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FINES FOR VIOLATION OF RULES 25-4.043, 24-4.019, 25-24.480, F.A.C.

DEBT DESCRIPTION, e.g., DRIVER LICENSE, SALARY OVERPAYMENT, PROPERTY DAMAGE

ADDITIONAL INFORMATION, e.g., DATE OF BIRTH, DRIVER LICENSE NUMBER, ETC.



Public Service Commission

98 JAN -5

PUBLIC SERV
DIV. OF ADMIN.

-M-E-M-O-R-A-N-D-U-M-

CUT IF CHECK

DATE: January 5, 1998

TO: Evelyn H. Sewell, Chief of Fiscal Services, Division of Administration

CC: Division of Records and Reporting
Division of Communications (Lewis)

FROM: Charles J. Pellegrini, Staff Counsel, Division of Legal Services

RE: Docket No. 971306-TI - Initiation of show cause proceedings against Heartline Communications, Inc. for violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries; Rule 25-4.019, F.A.C., Records and Reports in General; and Rule 25-24.480(2)(a)(b), F.A.C., Records and Reports; Rules Incorporated.

In Order No. PSC-97-1529-PCO-TI, issued December 5, 1997, the Commission required Heartline Communications, Inc., (Heartline) to show cause within 20 days of the order why it should not be fined in the amounts of \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code; \$15,000 for apparent violation of Rule 25-4.019, Florida Administrative Code; and \$500 for apparent violation of Rule 25-24.480(2), Florida Administrative Code, or have its certificate, Certificate No. 3494, canceled. The Commission's order was mailed to Heartline at P.O. Box 53029, Houston, Texas 77502-3029 on December 5, 1997, by certified mail. It was returned on December 23, 1997, with the notation "moved, left no address." The order provided that if Heartline failed to respond, the fines would be deemed assessed.

Collection efforts are unlikely to be productive. Hence, this matter is submitted to your office for approval to forward the account to the Department of Banking and Finance, Comptroller's Office, for appropriate disposition.

The events leading to this point are outlined below for your convenience:

1. In Order No. PSC-97-1529-PCO-TI, the Commission granted Heartline Certificate No. 3494 on October 26, 1993, to provide interexchange telecommunications services.
2. Commission staff made test calls on February 7, 1997, to evaluate the company's quality of service.

MEMORANDUM TO EVELYN H. SEWELL
JANUARY 5, 1998
PAGE 2

3. The company failed to supply billing information for the test calls
4. Commission staff requested the billing information on May 12, June 5, July 17, and July 29, 1997, without success. On October 3, 1997, it was learned that Heartline's telephone number was no longer in service.

On January 7, 1997, in Order No. PSC-97-0030-FOF-TI, the Commission approved a transfer of control from Heartline to Total National Telecommunications, Inc., (TNT). TNT filed a petition on September 12, 1997, for liquidation under Chapter 7 of the Bankruptcy Code in U.S. Bankruptcy Court, Southern District of Texas.

Please find the following documents attached hereto:

- a. Order No. PSC-97-1529-PCO-TI
- b. Order No. PSC-97-0030-FOF-TI

shall be furnished within fifteen (15) days
from the date of the Commission inquiry.

As noted above, Heartline failed to respond four times to the staff's inquiries concerning the billing information for the February 7, 1997, calling card test calls. Thus, we find that the company is in apparent violation of Rule 25-4.043, Florida Administrative Code.

Billing Information

Rule 25-4.019 (1), Florida Administrative Code, provides that:

Each utility shall furnish to the Commission at such times and in such form as the Commission may require, the results of any required tests and summaries of any required records.

As already noted, Heartline failed repeatedly to produce the billing information related to the staff's toll timing and billing tests. These tests were not unusual. They were part of the staff's routine evaluation activity. Thus, we find that the company is in apparent violation of Rule 25-4.019, Florida Administrative Code.

Updated Information

Rule 25-24.480, Florida Administrative Code, provides that:

(2) Each company shall file updated information for the following items with the Division of Communications and the Division of Records and Reporting within 10 days after such changes occur:

(a) The address of the certificate holder's main corporate and Florida offices (if any) including street name and address and post office box, city, state and zip code.

(b) Telephone number, name, and address of the individual who is to serve as primary liaison with the Commission in regards to the ongoing Florida operations of the certificated company.

In Order No. PSC-97-1046-PCO-TI, we found BizNet's violations of Rules 25-24.470 and 25-4.043, Florida Administrative Code, to be willful in the sense intended by Section 364.285, Florida Statutes. We do not regard BizNet's apparent response to our show cause order to be satisfactory. Thus, we hereby impose on BizNet a fine of \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, and a fine of \$10,000 for violation of Rule 25-4.043, Florida Administrative Code. BizNet shall be required to pay the fines within five working days of the issuance of this Order. Upon payment, the fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the fines are not paid after a reasonable collection effort, the matter shall be referred to the Office of the Comptroller for collection.

DISCONTINUATION OF UNDERLYING INTRASTATE
INTEREXCHANGE TELECOMMUNICATIONS SERVICES

Rule 25-24.470(3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited, states:

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.

We find that BizNet has operated in Florida as a reseller of interexchange telecommunications services without a certificate. Accordingly, we order all certificated interexchange carriers to discontinue providing intrastate long distance service for resale to BizNet.

ORDER NO. PSC-97-1528-FOF-TI
DOCKET NO. 970870-TI
PAGE 5

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that a fine of \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, and a fine of \$10,000 for violation of Rule 25-4.043, Florida Administrative Code, be imposed on BizNet Communications. It is further

ORDERED that BizNet Communications shall pay the fines within five working days of the issuance of this Order. It is further


ORDERED that, upon payment, the fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. It is further

ORDERED that if the fines are not paid after a reasonable collection effort, the matter shall be referred to the Office of the Comptroller for collection. It is further

ORDERED that any certificated interexchange carrier providing service to BizNet shall discontinue the service upon issuance of this Order. It is further

ORDERED that this docket shall be closed if BizNet Communications pays the fines hereby imposed or if it fails to pay the fines within five business days of the issuance of this Order.

By ORDER of the Florida Public Service Commission, this 5th day of December, 1997.



BLANCA S. BAYO, Director
Division of Records and Reporting

ORDER NO. PSC-97-1529-PCO-TI
DOCKET NO. 971306-TI
PAGE 2

On May 12, 1997, the staff notified Heartline by letter directed to company representative, Gloria Cross, that the required billing information for the test calls had not been received. The company did not respond. On June 5, 1997, the staff requested the information by certified mail, again directed to Ms. Cross. The company remained unresponsive and the staff repeated its request for the billing information during a telephone conversation with Ms. Cross on July 17, 1997. The staff requested the information a fourth time on July 29, 1997, by means of another certified letter. On October 3, 1997, the staff attempted to contact the company by telephone, but discovered that the telephone number was no longer in service with no forwarding information available. The staff has not received the billing information or an explanation for the company's failure to provide it as of the date of our decision in this matter.

We granted Heartline a certificate to provide interexchange telecommunications services in Order No. PSC-93-1568-FOF-TI, issued October 26, 1993. On September 5, 1996, we issued Order No. PSC-96-1123-AS-TI, in which we approved the company's offer of settlement concerning numerous complaints of unauthorized carrier changes. The settlement consisted of a settlement payment in the amount of \$50,000, as well as a number of provisions limiting the company's marketing activity.

On January 7, 1997, we issued Order No. PSC-97-0030-FOF-TI, approving transfer of control from Heartline to Total National Telecommunications, Inc. (TNT). When efforts to contact Heartline were unsuccessful, the staff attempted to contact TNT by telephone, but discovered that its telephone number was also no longer in service. On September 30, 1997, the staff learned that TNT filed a petition on September 12, 1997, for liquidation under Chapter 7 of the Bankruptcy Code in U.S. Bankruptcy Court, Southern District of Texas.

SHOW CAUSE

Response to Inquiries

Rule 25-4.043, Florida Administrative Code, provides that:

The necessary replies to inquiries propounded by the Commission's staff concerning service or the complaints received by the Commission

(S E A L)

CJP

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORDER NO. PSC-97-1528-FOF-TI
DOCKET NO. 970870-TI
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In re: Initiation of show cause proceedings against Heartline Communications, Inc. for violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries; Rule 25-4.019, Florida Administrative Code, Records and Reports in General; and Rule 25-24.480(2)(A)(B), Florida Administrative Code, Records and Reports; Rule Incorporated.

DOCKET NO. 971306-TI
ORDER NO. PSC-97-1529-PCO-TI
ISSUED: December 5, 1997

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.

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 TO SHOW CAUSE
AND
DIRECTING CERTIFICATED INTEREXCHANGE
TELECOMMUNICATIONS PROVIDERS TO DISCONTINUE SERVICE

BY THE COMMISSION:

BACKGROUND

On January 13, 1997, Commission staff notified Heartline Communications, Inc., (Heartline) that the company's quality of service would be evaluated pursuant to Rule 25-21.026, Florida Administrative Code, and requested that the company furnish regular bills for the calls. To facilitate the evaluation, the company furnished a calling card and PIN number for 0+ test calls. The staff made test calls on February 7, 1997, evaluating timing and billing, call completion and transmission quality of the service provided by Heartline.

DOCUMENT NUMBER-DATE
12457 DEC-57
FPSC-RECORDS/REPORTING

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0870

ORDER NO. PSC-97-1528-FOF-TI
DOCKET NO. 970870-TI
PAGE 3

initially contact BizNet. He states further that BizNet stopped soliciting prepaid debit card sales in November 1996.

In the same letter, Mr. Fargen states that BizNet "provided its own PIN numbers to various printers with whom it contracted," and that BizNet "can suspend or terminate PINS if they are not paid for." In a letter written to the staff dated February 4, 1997, Alfred Brown, president of 1st Choice Telecom, states that his company purchases the cards pre-encoded with a PIN from BizNet. In selling PINs for prepaid debit cards to a distributor in Florida, apparently without limitation as to use, as it did to 1st Choice Telecom, and later terminating the PINs for lack of payment, BizNet exposed itself to the sale in Florida of debit cards for which it holds itself out to the public as the service provider. This places BizNet under the jurisdiction of this Commission, regardless of the state of its relationships with distributors.

In Order No. PSC-96-124-FOF-TI, issued September 26, 1996, we defined a prepaid debit card (PDC) provider as one who "buys bulk time from an underlying interexchange company and repackages and resells the time as telephone prepaid cards." We ordered "that, beginning November 30, 1996, PDC providers who sell cards in Florida, who have not filed for certification, and who are in willful violation of the requirement that they be certificated as Interexchange Telecommunications Companies shall be fined not less than \$1,000." Thus, we find that BizNet is obligated to apply in Florida for a certificate to provide resold intrastate interexchange telecommunications services.

On April 28, 1997, the staff wrote a letter to BizNet informing it that two persons had registered complaints with this Commission concerning unusable prepaid debit cards. The staff asked the company to resolve the complaints and to report the results. The company has not furnished the requested report as of the date of our decision in this matter.

We find the allegation in the response that BizNet had responded to all "written" inquiries to be evasive. Order No. PSC-97-1046-PCO-TI contains numerous citations of the staff's frustrated efforts to communicate with BizNet concerning the need for certification and for resolution of consumer complaints. These include instances of no or unreasonably delayed responses to inquiries, the unnecessary and unusual interposition of a regulatory consultant, unreported address changes, name confusion, and out-of-service telephone numbers.

ORDER NO. PSC-97-1529-PCO-TI
DOCKET NO. 971306-TI
PAGE 4

The staff was unable to reach Heartline by telephone on October 3, 1997, because the company's telephone number was no longer in service. Ten days passed since a change evidently occurred and the company did not file updated information as required. Thus, we find that the company is in apparent violation of Rule 25-24.480(2), Florida Administrative Code.

Conclusion

By 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 us for any such violation. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a 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). Thus, intentional acts, such as Heartline's conduct at issue here, would meet the standard for a "willful violation."

We find that Heartline's conduct in failing to respond to staff inquiries and to file updated information within 10 days after a change has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order it to show cause why it should not be fined, stating, "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule."

Accordingly, we find that Heartline's apparent violations of Rules 25-4.043, 25-4.019, and 25-24.480(2), Florida Administrative Code, rise to the level warranting that we issue a show cause order. We hereby direct Heartline to show cause in writing within 20 days of the issuance of this Order why it should not be fined in the amounts of \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code; \$15,000 for apparent violation of Rule 25-4.019, Florida Administrative Code; and \$500 for apparent violation of Rules 25-24.480(2), Florida Administrative Code, or

have its certificate revoked. Pursuant to Section 364.285, Florida Statutes, any fines that may be levied shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285, Florida Statutes.

If Heartline fails to respond to this show cause order, the fines shall be deemed assessed. If the fines are not paid within five business days of the expiration of the show cause response period, Heartline's certificate shall be canceled.

DISCONTINUATION OF UNDERLYING INTRASTATE
INTEREXCHANGE TELECOMMUNICATIONS SERVICES

Rule 25-24.4701(3), Florida Administrative Code, states in part:

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.

We have ruled that if Heartline fails to respond to this show cause order, the fines proposed shall be deemed assessed and, if not paid within five business days of the expiration of the show cause response period, Heartline's certificate shall be canceled. If Heartline's certificate is canceled, any intrastate interexchange service offered by Heartline would be in violation of Rule 25-24.4701(3), Florida Administrative Code. Since we cannot readily identify which interexchange company provides service to Heartline, we hereby direct all certificated interexchange companies to discontinue service to Heartline, if Heartline fails to comply with the terms of this Order. Any interexchange company providing service to Heartline must contact this Commission at the conclusion of the show cause response period as set forth in this

intrastate long distance service for resale to BizNet at the conclusion of the proceeding.

FINES

On September 25, 1997, we received the apparent response of BizNet to Order No. PSC-97-1046-PCO-TI. We are troubled by the response's lack of authenticity. It is not on company letterhead; it contains no address; it is undated; and it does not bear any company official's or any other signature.

The response alleges that BizNet does not provide intrastate interexchange telephone services in Florida and declares that, accordingly, Rule 25-24.470, Florida Administrative Code, does not apply to it. It charges that 1st Choice Telecom distributed prepaid debit cards that BizNet did not activate because 1st Choice Telecom had not paid for them, and that it is "outrageous" to hold it responsible for the "fraudulent acts of others." It denies that the company has violated Florida law.

The response further alleges that the consumers who registered complaints with this Commission did not purchase cards in Florida and did not attempt to use the cards in Florida. It contends that we have no jurisdiction in this matter and that BizNet is not required to apply for certification in Florida. It states, moreover, that BizNet has responded to all of the Commission staff's written inquiries.

In the response, BizNet did not elect to request a hearing. The response simply indicates that the company "will respond to any written request for information in a reasonable period of time." It concludes with once again an assertion that BizNet does not provide intrastate services in Florida and, accordingly, is not required to obtain a certificate.

The contention of the response that this Commission does not have jurisdiction in this matter is unacceptable. Indeed, Seth Fargen, the president of BizNet, wrote a letter dated April 17, 1997, to the company's regulatory consultant, Cynthia Kott of Telecom Tariff Consultants, Inc., in which he described BizNet as "a remarketer of communications services." In that letter, Mr. Fargen states that BizNet purchases the underlying 800 service from U.S. Long Distance and that customers with problems or questions

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against BizNet 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.

DOCKET NO. 970870-TI
ORDER NO. PSC-97-1528-FOF-TI
ISSUED: December 5, 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 IMPOSING FINES
AND
REQUIRING DISCONTINUATION OF UNDERLYING INTEREXCHANGE
TELECOMMUNICATIONS SERVICES

BY THE COMMISSION:

BACKGROUND

By Order No. PSC-97-1046-PCO-TI, issued September 5, 1997, we ordered BizNet Communications (BizNet) to show cause why it should not be fined \$25,000 for providing telecommunications service in Florida without certification, in violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for not responding to staff inquiries in violation of Rule 25-4.043, Florida Administrative Code. We further ordered that if the show cause proceeding was not resolved in favor of BizNet, all certificated interexchange companies would be required to discontinue providing

ORDER NO. PSC-97-1529-PCO-TI
DOCKET NO. 971306-TI
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Order to determine whether Heartline's certificate has been canceled.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Heartline Communications, Inc., show cause in writing why it should not be fined in the amounts of \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code; \$15,000 for apparent violation of Rule 25-4.019, Florida Administrative Code; and \$500 for apparent violation of Rules 25-24.480(2), Florida Administrative Code, or have its certificate, Certificate No. 3494, canceled. It is further

ORDERED that any response to the Order to Show Cause filed by Heartline Communications, Inc., shall contain specific allegations of fact and law. It is further

ORDERED that any response to the Order to Show Cause shall be filed with the Director of the Division of Records and Reporting within 20 days of the issuance of this Order. It is further

ORDERED that upon receipt of Heartline Communications, Inc.'s response to the Order to Show Cause, and if it requests a hearing, further proceedings will be scheduled by the Commission, at which time Heartline Communications, Inc., will have an opportunity to contest the allegations in the body of this Order. It is further

ORDERED that if Heartline Communications, Inc., fails to file a timely response to the Order to Show Cause, such failure shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that any payment of fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. It is further

ORDERED that, if Heartline Communications, Inc.'s certificate is canceled as a result of this proceeding, all certificated interexchange companies shall discontinue providing intrastate long distance service for resale to Heartline Communications, Inc., at the conclusion of this proceeding. It is further

ORDERED that any certificated interexchange carriers providing service to Heartline Communications, Inc., shall contact this

DOCUMENT NUMBER-DATE

12449 DEC-97


FPSC-RECORDS/REPORTING

ORDER NO. PSC-97-1529-PCO-TI
DOCKET NO. 971306-TI
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Commission at the conclusion of the response period indicated herein in order to determine the status of this proceeding. It is further

ORDERED that this docket shall remain open pending resolution of the Order to Show Cause.

By ORDER of the Florida Public Service Commission, this 5th day of December, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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.

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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 26, 1997.

ORDER NO. PSC-97-1529-PCO-TI
DOCKET NO. 971306-TI
PAGE 8

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 pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(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 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for) DOCKET NO. 961304-TI
acknowledgement of transfer of) ORDER NO. PSC-97-0030-FOF-TI
control of stock from Heartline) ISSUED: January 7, 1997
Communications, Inc. to Total)
National Telecommunications,)
Inc.)
_____)

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

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING TRANSFER OF CONTROL

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is 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.

On October 31, 1996, Heartline Communications, Inc. (HCI), filed with this Commission a notice of transfer of control from HCI to Total National Telecommunications, Inc. (TNT). HCI, a privately held Texas corporation, is a non-dominant carrier that resells domestic interstate and international services acquired from underlying facilities-based carriers. Like HCI, TNT is a non-dominant carrier that resells domestic interstate and international services acquired from underlying facilities-based carriers. TNT holds Interexchange Telecommunications Certificate No. 3600, issued December 23, 1994, pursuant to Order No. PSC-94-1481-FOF-TI.

HCI and TNT have entered into a Purchase Agreement whereby TNT acquired substantially all of the assets, as well as liabilities,

ORDER NO. PSC-97-0030-FOF-TI
DOCKET NO. 961304-TI
PAGE 2

of HCI in exchange for 155,000 shares of TNT common stock. These 155,000 shares were then transferred in equal amounts of 38,750 shares to HCI's four Shareholders. Among other things, the assets which were transferred from HCI to TNT include all contracts, agreements and other arrangements; all price lists, customer lists and other customer information; accounts receivable; and all cash and cash equivalents or similar types of investments. TNT also acquired all rights to use the name "Heartline" or "HCI." Notwithstanding the disposition of substantially all of its assets and liabilities, HCI remains a separate incorporated entity.

HCI states that this transaction will facilitate lower prices and higher quality service to the public. No disruption of service nor inconvenience will result to HCI customers since the transaction will have been transparent to customers.

Pursuant to Section 364.345(2), Florida Statutes, we determine that the transfer of control from HCI to TNT is in the public interest and, accordingly, we grant our approval.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of control of Heartline Communications, Inc. to Total National Telecommunications, Inc. is hereby approved. It is further

ORDERED that, unless a person whose substantial interests are affected by the action proposed herein files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, this Order shall become final and effective and this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 7th day of January, 1997.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.

ORDER NO. PSC-97-0030-FOF-TI
DOCKET NO. 961304-TI
PAGE 3

(S E A L)

KMP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 28, 1997.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If this order becomes final and effective on the date described above, any party substantially 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.



Public Service Commission

98 JAN -5 AM 10:36

-M-E-M-O-R-A-N-D-U-M-

FLORIDA
PUBLIC SERVICE COMMISSION
DIV. OF ADMINISTRATION

DATE: January 5, 1998

TO: Evelyn H. Sewell, Chief of Fiscal Services, Division of Administration
CC: Division of Records and Reporting
Division of Communications (Pruitt)

FROM: Charles J. Pellegrini, Staff Counsel, Division of Legal Services

RE: 970870-TI - Initiation of show cause proceedings against BizNet Communications for violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

In Order No. PSC-97-1528-FOF-TI, issued December 5, 1997, the Commission imposed fines on BizNet Communications (BizNet) in the amounts of \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for violation of Rule 25-4.043, Florida Administrative Code. The Commission's order was mailed to BizNet at 9441 E. 31st. St., No. 207, Tulsa Oklahoma 74145, on December 5, 1997, by certified mail. It was returned on December 26, 1997, with the notation "box closed no order." The order provided that BizNet pay the fines within five working days of the order.

The order further provided that if the fines were not paid after a reasonable collection effort, the matter would be referred to the Office of the Comptroller for collection. Collection efforts are unlikely to be productive. Hence, this matter is submitted to your office for approval to forward the account to the Department of Banking and Finance, Comptroller's Office, for appropriate disposition.

The events leading to this point are outlined below for your convenience:

1. On February 19, 1997, Commission staff received from the State Attorney, First Judicial Circuit of Florida, an information packet related to prepaid debit cards distributed by a company in Pensacola, Florida, 1st Choice Telecom (1st Choice). On March 21, 1997 1st Choice advised that BizNet was the 800 service provider for the cards.

2. Commission staff sent a letter requesting information concerning its services to BizNet on March 24, 1997. The company failed to respond by the required date, April 8. On April 9, 1997, commission staff sent a certified letter, requesting the same information by April 29. On April 23, 1997, commission staff received two complaints that BizNet cards did not work.
3. Commission staff spoke with the company's president, Seth Fargen, on April 23, 1997. Mr. Fargen said that BizNet disconnected service to 1st Choice because it had not paid its bills. He also indicated that BizNet was no longer soliciting prepaid debit cards. He acknowledged, however, that cards were still in circulation. Commission staff informed Mr. Fargen that his company, as the service provider, was responsible for the consumer complaints about the lack of service provided through the cards, and that, furthermore, his company needed to be certificated in Florida as an interexchange telecommunications provider.
4. On April 25, 1997, commission staff's April 9 certified letter was returned as undeliverable. It was then learned that BizNet had a new mailing address. On April 28, 1997, our staff sent another certified letter and application to the new address, requesting a resolution of the complaints by May 13, 1997, and filing of a completed application by May 28, 1997.
5. BizNet responded to commission staff's very first letter on April 29, 1997. The company stated that it stopped soliciting prepaid debit cards in November 1996. It requested that future correspondence be directed to its regulatory consultant. The post office verified that the application packet and certified letter of April 28, 1997, were received on April 30, 1997.
6. On June 12, 1997, commission staff called BizNet's regulatory consultant and left a message concerning the company's need to file an application. On June 13, 1997, the consultant left a message to contact BizNet at a new number. Commission staff called the new number, which was answered by a recording identifying the answering party as "Phone Card Associates." Commission staff left a message requesting once again that BizNet file the required application and expeditiously resolve the complaints against it. On July 10, 1997, commission staff again attempted to call BizNet, but this time found that the telephone service was disconnected. Commission staff then called BizNet's fax line, which was answered by a recording identifying the answering party as "BizNet." Commission staff left a message requesting a return call. BizNet did not respond to these requests.

7. On July 23, 1997, commission staff called the 800 access number listed on the debit cards. The call was answered by a recording that stated, "We're sorry, the 800 number you have dialed is not currently active." When commission staff called the 800 customer service number on the cards, a recording answered stating, "As you are probably aware, our switch is still being upgraded. We apologize for any inconvenience. Your prepaid cards will be honored as soon as the switch is up. Thank you so much for your patience. Thank you for calling. Good bye."
8. In Order No. PSC-97-1046-PCO-TI, issued September 5, 1997, the Commission ordered BizNet to show cause why it should not be fined \$25,000 for providing telecommunications service in Florida without certification in violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for not responding to staff inquiries in violation of Rule 25-4.043, Florida Administrative Code.
9. On September 25, 1997, commission staff received BizNet's apparent response.
10. In Order No. PSC-97-1528-FOF-TI, the Commission found that the response lacked authenticity and merit. It imposed fines as described above, which were payable by December 12, 1997.

Please find the following documents attached hereto:

- a. Order No. PSC-97-1528-FOF-TI
- b. Order No. PSC-97-1046-PCO-TI
- c. Apparent BizNet response

ORIGINAL

Director, Division of Records & Reporting
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED

SEP 26 1997

Response to Order no PSC-97-1046-PCO-TI
Docket 970870-T1

CMU

In response to you allegations that BizNet has violated rules of the Public Service Commission specifically rule 25-24.470 and Rule 24-4.043 BizNet responds as follows:

In response to rule 25-24.470, BizNet does not provide intrastate interchange telephone service in the State of Florida. We have absolutely no facilities, lines or equipment in the State of Florida, nor have we every had. Therefore this Rule is not even applicable to BizNet. You make a statement that BizNet is listed as the service provider on cards distributed by First Choice. We never printed any cards for First Choice. It is a common business practice in the prepaid card industry to sell PINs in large quantities so that distributors can receive better prices on their printing. It is apparent to us that First Choice sold cards that were never activated, because they were never paid for, but yet still sold these cards to consumers. It is outrageous that you are trying to hold us responsible for the fraudulent acts of others.

Furthermore it appears that the three alleged violations of this rule for which you received verbal complaints from consumers were from people who did not purchase the cards in Florida, nor did they attempt to use their cards in Florida. If you have evidence to the contrary we expect to be provided with appropriate documentation.

It is our contention that there is no jurisdiction in this matter and that BizNet is not required to file for a certificate as it is not providing the services which you allege.

In response to Rule 25-4.043 we have responded to all written inquires received by BizNet. We have never received any documentation which supports your allegations. We have not intentionally disregarded communications from your staff.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAC _____
- LEG _____ In summary,
- LIN _____ BizNet is not required to obtain a certificate, as it does not provide intrastate services within the State of Florida.
- OPC _____ We will respond to any written request for information in a reasonable period of time.
- RCH _____
- SEC _____ BizNet, Inc.
- WAS _____ Tulsa, OK
- OTH _____

DOCUMENT NUMBER-DATE
09851 SEP 26 1997
PSC-RECORDS & REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against BizNet Communications for violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 970870-TI
ORDER NO. PSC-97-1046-PCO-TI
ISSUED: September 5, 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 TO SHOW CAUSE
AND
NOTICE OF PROPOSED AGENCY ACTION ORDER
DIRECTING CERTIFICATED INTEREXCHANGE
TELECOMMUNICATIONS PROVIDERS TO DISCONTINUE SERVICE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein relative to discontinuation of interexchange telecommunications services is 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

08953 SEP-5 97

FPSC-RECORDS/REPORTING

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0870

On June 12, our staff called BizNet's regulatory consultant and left a message concerning the company's need to file an application. On June 13, the consultant left a message to contact BizNet at a new number. Our staff called the new number, which was answered by a recording identifying the answering party as "Phone Card Associates." Our staff left a message requesting once again that BizNet file the required application and expeditiously resolve the complaints against it. On July 10, staff again attempted to call BizNet, but this time found that the telephone service was disconnected. Our staff then called BizNet's fax line, which was answered by a recording identifying the answering party as "BizNet." Our staff left a message requesting a return call. As of the date of our decision, BizNet has not responded to these requests.

On July 23, our staff called the 800 access number listed on the debit cards. The call was answered by a recording that stated, "We're sorry, the 800 number you have dialed is not currently active." When our staff called the 800 customer service number on the cards, a recording answered stating, "As you are probably aware, our switch is still being upgraded. We apologize for any inconvenience. Your prepaid cards will be honored as soon as the switch is up. Thank you so much for your patience. Thank you for calling. Good bye."

In all of these circumstances, we find it appropriate to order BizNet to show cause as set forth below.

SHOW CAUSE

Rule 25-24.470, Florida Administrative Code, states, in part:

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 payments for services be collected, until the effective date of a certificate, if granted.

BizNet is listed as the service provider on the prepaid debit cards distributed by 1st Choice. BizNet is not certificated to provide interexchange telecommunications services in Florida. Furthermore, BizNet has failed to file the necessary application

Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 25, 1997. 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.

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 pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(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 order to show cause 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 concerning the discontinuation of underlying intrastate interexchange telecommunications services to BizNet Communications is proposed agency action. It is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), 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 26, 1997. 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

ORDER NO. PSC-97-1046-PCO-TI
DOCKET NO. 970870-TI
PAGE 9

to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If the relevant portion of this order becomes 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.

ORDER NO. PSC-97-1046-PCO-TI
DOCKET NO. 970870-TI
PAGE 2

BACKGROUND

On February 19, 1997, our staff received from the State Attorney, First Judicial Circuit of Florida, an information packet related to prepaid debit cards distributed by a company in Pensacola, Florida, 1st Choice Telecom (1st Choice). Our staff sent 1st Choice a letter inquiring about its role in the prepaid debit card business and to ascertain the service provider for the cards. On March 21, 1st Choice responded that BizNet Communications (BizNet) was the 800 service provider for the cards.

Our staff sent a letter requesting information concerning its services to BizNet on March 24. The company failed to respond by the required date, April 8. On April 9, our staff sent a certified letter, requesting the same information by April 29. In the meantime, on April 23, our staff received two complaints about BizNet cards not working. Our staff spoke with the company's president, Seth Fargen, on April 23. Mr. Fargen said that BizNet disconnected service to 1st Choice because it had not paid its bills. He also indicated that BizNet was no longer soliciting prepaid debit cards. He acknowledged, however, that cards were still in circulation. Our staff informed Mr. Fargen that his company, as the service provider, was responsible for the consumer complaints about the lack of service provided through the cards, and that, furthermore, his company needed to be certificated in Florida as an interexchange telecommunications provider.

On April 25, our staff's April 9 certified letter was returned as undeliverable. Our staff then called the BizNet number on file with the Commission and learned that BizNet had a new mailing address. On April 28, our staff sent another certified letter and application to the new address, requesting a resolution of the complaints by May 13 and filing of a completed application by May 28.

BizNet responded to our staff's very first letter on April 29. The company stated that it stopped soliciting prepaid debit cards in November 1996. It requested that future correspondence be directed to its regulatory consultant. The post office verified that the application packet and certified letter of April 28 were received on April 30.

ORDER NO. PSC-97-1046-PCO-TI
DOCKET NO. 970870-TI
PAGE 5

writing within 20 days of this Order why it should not be fined in the amount of \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code. Pursuant to Section 364.285, Florida Statutes, any payment of fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund.

DISCONTINUATION OF UNDERLYING INTRASTATE
INTEREXCHANGE TELECOMMUNICATIONS SERVICES

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

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.

We have found that it appears that BizNet is operating in Florida without a certificate. Accordingly, if this show cause proceeding is not resolved in favor of BizNet, we instruct all certificated interexchange companies to discontinue providing intrastate long distance service for resale to BizNet at the conclusion of this proceeding. Any certificated interexchange carriers providing service to BizNet must contact the Commission at the conclusion of the response period indicated herein in order to determine the status of this proceeding.

ORDER NO. PSC-97-1046-PCO-TI
DOCKET NO. 970870-TI
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Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that BizNet Communications shall be required to show cause in writing why it should not be fined \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for violation of Rule 25-4.043, Florida Administrative Code. It is further

ORDERED that any response to the Order to Show Cause filed by BizNet Communications shall contain specific allegations of fact and law. It is further

ORDERED that any response to the Order to Show Cause shall be filed with the Director of the Division of Records and Reporting within 20 days of this Order. It is further

ORDERED that upon receipt of BizNet Communications' response to the Order to Show Cause, and upon its request for a hearing, further proceedings will be scheduled by the Commission, at which time BizNet Communications will have an opportunity to contest the allegations in the body of this Order. It is further

ORDERED that if BizNet Communications fails to file a timely response to the Order to Show Cause, such failure shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that any payment of fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. It is further

ORDERED that, if this show cause proceeding is not resolved in favor of BizNet Communications, all certificated interexchange companies shall discontinue providing intrastate long distance service for resale to BizNet Communications at the conclusion of this proceeding. It is further


ORDERED that any certificated interexchange carriers providing service to BizNet shall contact this Commission at the conclusion of the response period indicated herein in order to determine the status of this proceeding. It is further

ORDER NO. PSC-97-1046-PCO-TI
DOCKET NO. 970870-TI
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ORDERED that the provision of this Order issued as proposed agency action 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

ORDERED that in the event this Order becomes final, this docket shall remain open pending resolution of the order to show cause.

By ORDER of the Florida Public Service Commission, this 5th day of September, 1997.



BLANCA S. BAYO, Director
Division of Records and Reporting

(S E A L)

CJP

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 order to show cause is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the order to show cause may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida

ORDER NO. PSC-97-1046-PCO-TI
DOCKET NO. 970870-TI
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for certification as an interexchange telecommunications provider, despite being advised of its obligation to do so on a number of occasions. Thus, we find that it appears that BizNet has violated Rule 25-24.470, Florida Administrative Code.

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, requires that, "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." BizNet failed to respond to numerous staff inquiries and, as just noted, as of the date of our decision has yet to file an application for certification or to respond to the complaints of debit card purchasers. Thus, we further find that it appears that BizNet has also violated Rule 25-4.043, Florida Administrative Code.

By 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 Commission rule or order, or any provision of Chapter 364, Florida Statutes. Utilities are charged with knowledge of our rules and statutes. Additionally, "[i]t is a 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). Thus, intentional acts, such as BizNet's conduct at issue here, would meet the standard for a "willful violation."

We find that BizNet's apparent conduct in offering telecommunications services without holding a certificate and in failing to respond to staff inquiries has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order it to show cause why it should not be fined, stating that, "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule."

Accordingly, we find that BizNet's apparent violations of Rule 25-24.470, Florida Administrative Code, and Rule 25-4.043, Florida Administrative Code, rise to a level warranting that a show cause order be issued. Therefore, we order BizNet to show cause in

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against BizNet 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.

DOCKET NO. 970870-TI
ORDER NO. PSC-97-1528-FOF-TI
ISSUED: December 5, 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 IMPOSING FINES
AND
REQUIRING DISCONTINUATION OF UNDERLYING INTEREXCHANGE
TELECOMMUNICATIONS SERVICES

BY THE COMMISSION:

BACKGROUND

By Order No. PSC-97-1046-PCO-TI, issued September 5, 1997, we ordered BizNet Communications (BizNet) to show cause why it should not be fined \$25,000 for providing telecommunications service in Florida without certification, in violation of Rule 25-24.470, Florida Administrative Code, and \$10,000 for not responding to staff inquiries in violation of Rule 25-4.043, Florida Administrative Code. We further ordered that if the show cause proceeding was not resolved in favor of BizNet, all certificated interexchange companies would be required to discontinue providing

DOCUMENT NUMBER-DATE

12449 DEC-56

FPSC-RECORDS/REPORTING

ORDER NO. PSC-97-1528-FOF-TI
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PAGE 2

intrastate long distance service for resale to BizNet at the conclusion of the proceeding.

FINES

On September 25, 1997, we received the apparent response of BizNet to Order No. PSC-97-1046-PCO-TI. We are troubled by the response's lack of authenticity. It is not on company letterhead; it contains no address; it is undated; and it does not bear any company official's or any other signature.

The response alleges that BizNet does not provide intrastate interexchange telephone services in Florida and declares that, accordingly, Rule 25-24.470, Florida Administrative Code, does not apply to it. It charges that 1st Choice Telecom distributed prepaid debit cards that BizNet did not activate because 1st Choice Telecom had not paid for them, and that it is "outrageous" to hold it responsible for the "fraudulent acts of others." It denies that the company has violated Florida law.

The response further alleges that the consumers who registered complaints with this Commission did not purchase cards in Florida and did not attempt to use the cards in Florida. It contends that we have no jurisdiction in this matter and that BizNet is not required to apply for certification in Florida. It states, moreover, that BizNet has responded to all of the Commission staff's written inquiries.

In the response, BizNet did not elect to request a hearing. The response simply indicates that the company "will respond to any written request for information in a reasonable period of time." It concludes with once again an assertion that BizNet does not provide intrastate services in Florida and, accordingly, is not required to obtain a certificate.

The contention of the response that this Commission does not have jurisdiction in this matter is unacceptable. Indeed, Seth Fargen, the president of BizNet, wrote a letter dated April 17, 1997, to the company's regulatory consultant, Cynthia Kott of Telecom Tariff Consultants, Inc., in which he described BizNet as "a remarketer of communications services." In that letter, Mr. Fargen states that BizNet purchases the underlying 800 service from U.S. Long Distance and that customers with problems or questions

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.

initially contact BizNet. He states further that BizNet stopped soliciting prepaid debit card sales in November 1996.

In the same letter, Mr. Fargen states that BizNet "provided its own PIN numbers to various printers with whom it contracted," and that BizNet "can suspend or terminate PINS if they are not paid for." In a letter written to the staff dated February 4, 1997, Alfred Brown, president of 1st Choice Telecom, states that his company purchases the cards pre-encoded with a PIN from BizNet. In selling PINs for prepaid debit cards to a distributor in Florida, apparently without limitation as to use, as it did to 1st Choice Telecom, and later terminating the PINs for lack of payment, BizNet exposed itself to the sale in Florida of debit cards for which it holds itself out to the public as the service provider. This places BizNet under the jurisdiction of this Commission, regardless of the state of its relationships with distributors.

In Order No. PSC-96-124-FOF-TI, issued September 26, 1996, we defined a prepaid debit card (PDC) provider as one who "buys bulk time from an underlying interexchange company and repackages and resells the time as telephone prepaid cards." We ordered "that, beginning November 30, 1996, PDC providers who sell cards in Florida, who have not filed for certification, and who are in willful violation of the requirement that they be certificated as Interexchange Telecommunications Companies shall be fined not less than \$1,000." Thus, we find that BizNet is obligated to apply in Florida for a certificate to provide resold intrastate interexchange telecommunications services.

On April 28, 1997, the staff wrote a letter to BizNet informing it that two persons had registered complaints with this Commission concerning unusable prepaid debit cards. The staff asked the company to resolve the complaints and to report the results. The company has not furnished the requested report as of the date of our decision in this matter.

We find the allegation in the response that BizNet had responded to all "written" inquiries to be evasive. Order No. PSC-97-1046-PCO-TI contains numerous citations of the staff's frustrated efforts to communicate with BizNet concerning the need for certification and for resolution of consumer complaints. These include instances of no or unreasonably delayed responses to inquiries, the unnecessary and unusual interposition of a regulatory consultant, unreported address changes, name confusion, and out-of-service telephone numbers.

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In Order No. PSC-97-1046-PCO-TI, we found BizNet's violations of Rules 25-24.470 and 25-4.043, Florida Administrative Code, to be willful in the sense intended by Section 364.285, Florida Statutes. We do not regard BizNet's apparent response to our show cause order to be satisfactory. Thus, we hereby impose on BizNet a fine of \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, and a fine of \$10,000 for violation of Rule 25-4.043, Florida Administrative Code. BizNet shall be required to pay the fines within five working days of the issuance of this Order. Upon payment, the fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the fines are not paid after a reasonable collection effort, the matter shall be referred to the Office of the Comptroller for collection.

DISCONTINUATION OF UNDERLYING INTRASTATE
INTEREXCHANGE TELECOMMUNICATIONS SERVICES

Rule 25-24.470(3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited, states:

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.

We find that BizNet has operated in Florida as a reseller of interexchange telecommunications services without a certificate. Accordingly, we order all certificated interexchange carriers to discontinue providing intrastate long distance service for resale to BizNet.

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Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that a fine of \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, and a fine of \$10,000 for violation of Rule 25-4.043, Florida Administrative Code, be imposed on BizNet Communications. It is further

ORDERED that BizNet Communications shall pay the fines within five working days of the issuance of this Order. It is further


ORDERED that, upon payment, the fines shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund. It is further

ORDERED that if the fines are not paid after a reasonable collection effort, the matter shall be referred to the Office of the Comptroller for collection. It is further

ORDERED that any certificated interexchange carrier providing service to BizNet shall discontinue the service upon issuance of this Order. It is further

ORDERED that this docket shall be closed if BizNet Communications pays the fines hereby imposed or if it fails to pay the fines within five business days of the issuance of this Order.

By ORDER of the Florida Public Service Commission, this 5th day of December, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP