

ORIGINAL

OFFICE OF THE ATTORNEY GENERAL



THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

April 24, 1998

VIA HAND DELIVERY

Blanca Bayo, Director
Department of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Initiation of Show Cause Proceeding against Minimum Rate Pricing, Inc. For
Violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier
Selection, Docket No. 971482-TL

Dear Ms. Bayo:

Please find the enclosed original and fifteen copies of the Joint Response of the Attorney
General and Public Counsel to Minimum Rate Pricing, Inc.'s Motion to Dismiss or Quash, or, in the
Alternative, Motion for More Definite Statement or Partial Response to Show Cause Order for filing
in the above-mentioned proceedings. Thank you for your attention to this matter.

Sincerely,

Michael Gross
Assistant Attorney General

ACK
AFA
APP
CAF
CMU
CTR
EAG
LEG
LIN
OPC
RCH
SEC
WAS
OTH

PL-01 The Capitol
Tallahassee, Florida 32399-1050
850-414-3818
850-488-6589 (Fax)

1 Enclosures

cc: Charles Beck
W.O. Birchfield
John Bowman
William P. Cox
Jeffrey Harris
Eric Rubin

F:\USERS\SPECIAL\TRICIA\SLAMMING\LTRBB.WPD

RECEIVED 3 FIELD

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

04613 APR 24 98

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of Show Cause
proceeding against Minimum Rate
Pricing, Inc. for violation of Rule
25-4.118 F.A.C., Interexchange
Carrier Selection

Docket No. 971482-TI

**JOINT RESPONSE OF THE ATTORNEY GENERAL AND
PUBLIC COUNSEL TO MINIMUM RATE PRICING, INC.'S
MOTION TO DISMISS OR QUASH, OR, IN THE ALTERNATIVE,
MOTION FOR MORE DEFINITE STATEMENT OR
PARTIAL RESPONSE TO SHOW CAUSE ORDER**

Robert A. Butterworth, Attorney General (Attorney General) and the Citizens of the State of Florida, by and through the Office of Public Counsel (Public Counsel), respond to Minimum Rate Pricing Inc.'s (MRP) Motion to Dismiss or Quash, or in the Alternative, Motion for More Definite Statement or Partial Response to Show Cause Order, and state:

I. Section 120.695, Florida Statutes, authorizes imposition of fines upon MRP and cancellation of its certificate to assure compliance with Rule 25-4.118, Florida Administrative Code, since MRP's violation is a major violation resulting in economic harm, adversely affects the public health, safety, and welfare, and creates a significant threat of such harm.

Section 120.695, Florida Statutes, states that it "is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the legislature, and that "[f]ines and other penalties may be provided in order to assure compliance." A notice of noncompliance is required prior to imposition of fines and other penalties solely when both of two criteria are met: (1) the violation of the rule must be a minor violation, which is defined as a one which causes no economic harm and does not adversely affect the public health, safety, and welfare or create a significant threat of such harm; and (2) the violation must involve an instance in which it is reasonable to assume that the violator was unaware of the rule or unclear

DOCUMENT NUMBER-DATE

04613 APR 24 88

FROM RECORDS/REPORTING

as to how to comply with it.

The Show Cause Order states that beginning approximately one month after MRP became certificated, the Commission received the first of 50 complaints of slamming over the period from June 13, 1996, until December 17, 1997, and continues to receive additional slamming complaints. The customers complained that the telemarketing activities of MRP led them to believe they were signing up for a discount plan and not switching their long distance provider. Drew Keena, Vice President of MRP, in connection with MRP's application for certification, executed an Application Acknowledgment Statement on August 30, 1995 expressly acknowledging receipt and understanding of the Commission's rules and orders relating to MRP's provision of interexchange telephone service in Florida and confirming his understanding of his responsibility to comply with all current and future Commission requirements regarding interexchange telephone service. A copy of the Applicant Acknowledgment Statement is attached as Exhibit 1. Beginning with the first slamming infraction, the Commission staff sent a notice of violation to MRP, and did so with respect to all subsequent complaints. Under the circumstances, it is not reasonable to assume that MRP was unaware of the anti-slamming rule or unclear as to how to comply with it. Even if MRP was initially unaware, contrary to its acknowledgment, one would expect that at some point short of 50 notices of violation, it would have seen the light.

Additionally, MRP's contention that its actions caused no economic harm or adverse effect upon the public welfare is without merit. The National Association of Attorneys General, Consumer Protection Committee, Telecommunications Subcommittee (joined by Florida), in its Comments to the FCC in its pending slamming docket, succinctly stated the harm as follows:

Slamming is a plague that distorts the competitive marketplace and impedes its

development. Without effective remedial action, consumer confidence will be diminished, subscribers will be stolen from honest competitors, and thieves will be financially rewarded.

Comments of the National Association of Attorneys General, Consumer Protection Committee, Telecommunications Subcommittee, Before the FCC, In the Matter of the Subscriber Carrier Selection Changes, Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129. Moreover, as stated by one slamming victim registering his complaint with Attorney General Robert A. Butterworth, "these illegal practices are extremely annoying, waste valuable time and money, and will not stop unless the penalties are severe." See copy of letter dated April 2, 1998 from Edward Kassab to Robert a. Butterworth, attached as Exhibit 2. Unequivocally, slamming impairs consumer choice and competition and results in economic harm. Economic harm occurs when consumers incur higher rates and fees, lose incentives with existing carriers, and the loss of the time value of money even when they are rerated or receive refunds. Economic harm is inflicted on the consumers' existing carriers who lose revenues from loss of business. Furthermore, MRP has not demonstrated that it has rerated or refunded money to all 50 complainants. Even when a bank robber returns the money after he has been caught, there is still an obvious adverse effect on the public welfare. Accordingly, in those cases where consumers received a refund, the public welfare was nevertheless adversely affected.

II. The Show Cause Order exceeds the minimum requirements established by the Supreme Court of Florida for giving full and complete notice of the proceedings and the basis for its authority.

The Florida Supreme Court previously reviewed the sufficiency of a show cause order issued by the Commission in the case of Commercial Ventures, Inc. v. Beard, 595 So.2d 47 (Fla.

1992). Commercial Ventures challenged the show cause order on the basis that there is a jurisdictional requirement that the statutory words, "refused to comply with" or "willfully violated," included in section 364.285, Florida Statutes, must be stated in the Show Cause Order for it to be valid. Id. at 48. The Supreme Court quoted the relevant allegations of the Show Cause Order in Commercial Ventures as follows:

Commercial Ventures, Inc. a certified PATS (telephone company providing pay telephone services) subject to the jurisdiction of this Commission, repeatedly failed to comply with the above-identified rules (Rule 25-24.515 (4) (5) (10), Florida Administrative Code). This Commission will not tolerate cavalier disregard of our rules by regulated utilities. Section 364.285, Florida Statutes, gives this Commission authority to impose a fine of up to \$5,000 per day for violation of Commission rules, each day constituting a separate offense.

Id. The Supreme Court found the Show Cause Order adequate and stated the following:

The Order Initiating show Cause Proceedings clearly set forth that Commercial Ventures repeatedly failed to comply with the Commission's rules. Both the statutory authority and the rule were specified in the order. We find that the allegations contained in the order **are clearly adequate to give Commercial Ventures full and complete notice of the proceedings and the basis for their authority.** [emphasis supplied].

Id. The Show Cause Order in the present case alleges that MRP committed 50 violations of Rule 25-4.118, Florida Administrative Code, and cites Section 364.285, Florida Statutes, as its authority for imposing fines for refusal to comply with or willful violation of Commission rules or orders. Four specific examples were alleged with supporting documentation attached as exhibits to the Show Cause Order. MRP finds the Order objectionable, because all 50 complaints are not detailed in the text of the Show Cause Order. At the outset, we note that the Show Cause Order in Commercial Ventures did not detail any of the specific complaints, but alleged "repeated violations" of the cited rules. A copy of the Show Cause Order in Commercial Ventures is

attached hereto as Exhibit 3. Moreover, Commission staff furnished documentation to MRP, including a notice of violation, for all 50 complaints. Consequently, MRP has been given notice and an opportunity to be heard sufficient to satisfy applicable standards of due process.

By issuance of the Show Cause Order, the Commission is affording MRP an opportunity to present evidence justifying its contention that it has complied with the law and to prepare a record to rely upon in making a legal challenge to the Commission's final action should the MRP be dissatisfied with it. City of Tallahassee v. Mann, 411 So.2d 162, 164 (Fla. 1981). Therefore, MRP has the burden of going forward with evidence in justification of its practices. *Id.* The Show Cause Order on page 6 clearly states that it is "preliminary, procedural or intermediate in nature."

MRP's request for a more definite statement is equally unfounded. As set forth above, more than sufficient notice of the violations alleged has been provided both in the Show Cause Order itself and in documentation furnished to MRP in connection with all of the complaints relied upon. In fact, some of the information requested by MRP is within its exclusive control, and the Attorney General and Public Counsel intend to request it from MRP through discovery. Curiously, MRP asks for information as to how its safeguards are inadequate. It seems that the lack of adequate safeguards is apparent from the inordinate number of slams. The proof is in the pudding.

III. MRP's telemarketing scripts approved by its president are inherently and facially misleading and calculated to induce an unauthorized switch by misrepresentation of facts.

MRP contends that it follows its scripts, and that "[i]solated acts of misconduct by a low level employee does not necessarily equal a willful act of the corporation." However, Thomas Salzano, President of MRP testified under oath on March 4, 1997 at a deposition taken by the

State of New Jersey Department of Law and Public Safety, Division of Consumer Affairs that he approves all telemarketing scripts for MRP. Excerpts of Mr. Salzano's testimony are attached as Exhibit 4. Examples of telemarketing scripts used by MRP during the time period relevant to this proceeding are attached as Exhibit 5. These scripts variously misrepresent that MRP offers savings somehow endorsed by the FCC, that MRP is an agent for underlying carriers, and that MRP is a discount or bill consolidation plan, while attempting to conceal from the consumer that MRP is in reality a long distance telephone provider. A review of the scripts discloses that they are intended to mislead consumers and supports the conclusion that implementation of the scripts with the approval of the President of MRP constitutes a willful violation of the Commission's rules. While two of the complaints detailed in the Show Cause Order did not result in slams, they constitute evidence of wilfulness by showing MRP's pattern of conduct. MRP's response to the four complaints detailed in the Show Cause Order, as well as the overall substance of its defensive motions, are essentially denials and affirmative defenses raising factual disputes, and do not support a dismissal of the Show Cause Order. Accordingly, MRP's motion to dismiss or quash or for more definite statement should be DENIED.

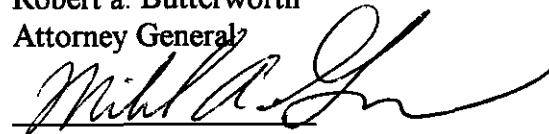
Dated this 24th day of April, 1998.

Respectfully submitted,

Charles J. Beck
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

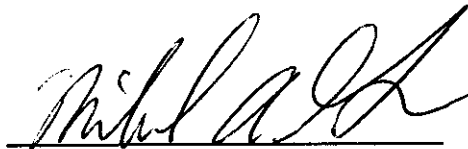
Robert a. Butterworth
Attorney General



Michael a. Gross
Assistant Attorney General
Fla. Bar No. 0199461
Office of the Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
FAX: (850) 488-6589

CERTIFICATE OF SERVICE
DOCKET NO. 971482-TI

I CERTIFY that a copy hereof has been furnished by U.S. Mail to the following persons
on this 24~~th~~ day of April, 1998.



Michael A. Gross

Charles J. Beck
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Eric M. Rubin
Jeffrey Harris
Rubin, Winston, Diercks, Harris &
Cooke, L.L.P.
1333 New Hampshire Avenue Northwest
Suite 1000
Washington, D.C. 20036

William O. Birchfield
Scott G. Schildberg
Martin, Ade, Birchfield & Mickler, P.A.
3000 Independant Square
Jacksonville, FL 32202

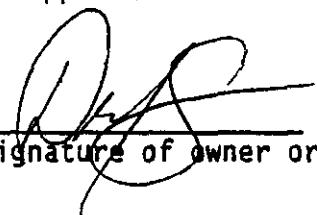
John Bowman
William P. Cox
Staff Counsel, Division of Legal Services
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Kenneth A. Hoffman
Rutledge, Ecenia, Underwood, Purnell &
Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302

EXHIBIT 1:
Applicant Acknowledgment Statement

APPLICANT ACKNOWLEDGEMENT STATEMENT

1. REGULATORY ASSESSMENT FEE: I understand that all telephone companies must pay a regulatory assessment fee in the amount of .15 of one percent of its gross operating revenue derived from intrastate business. Regardless of the gross operating revenue of a company, a minimum annual assessment fee of \$50 is required.
2. GROSS RECEIPTS TAX: I understand that all telephone companies must pay a gross receipts tax of one and one-half percent on all intra and interstate business.
3. SALES TAX: I understand that a seven percent sales tax must be paid on intra and interstate revenues.
4. LEC BYPASS RESTRICTIONS: I acknowledge the Commission's policy that interexchange carriers shall not construct facilities to bypass the LECs without first demonstrating to the Commission that the LEC cannot offer the needed facilities at a competitive price and in a timely manner.
5. RECEIPT AND UNDERSTANDING OF RULES: I acknowledge receipt and understanding of the Florida Public Service Commission's Rules and Orders relating to my provision of interexchange telephone service in Florida. I also understand that it is my responsibility to comply with all current and future Commission requirements regarding interexchange telephone service.
6. ACCURACY OF APPLICATION: By my signature below, I attest to the accuracy of the information contained in this application and associated attachments.

Drew Keena 

Typed name and signature of owner or chief officer.

Vice President

Title

8/30/95

Date

ATTACHMENTS:

- A - CERTIFICATE TRANSFER STATEMENT
- B - CUSTOMER DEPOSITS AND ADVANCE PAYMENTS
- C - INTRASTATE NETWORK
- D - FLORIDA TELEPHONE EXCHANGES AND EAS ROUTES
- E - GLOSSARY

FORM PSC/CMU 31 (10/90)

EXHIBIT 2:

4/2/98 Complaint Letter from Edward Kassab to Attorney General Butterworth



A & K INSURANCE CONSULTANTS, INC.
 AUTO - HOME - COMMERCIAL - LIFE - GROUP - HEALTH

Corres/Slammed
 REVISE form
 2 prev were
 on Supra
 cc: M. Gross

April 2, 1998

Mr. Robert Butterworth
 Attorney General
 State of Florida
 The Capitol, Pl-01
 Tallahassee, Florida 32399-1050

RECEIVED
 APR 17 1998
 OFFICE OF ATTORNEY GENERAL
 SPECIAL PROJECTS SECTION

DEPARTMENT OF LEGAL AFFAIRS
 98 APR -8 PM 2:5F
 TALLAHASSEE FLORIDA

Certified mail Z-010-795-816

Dear Mr. Butterworth:

This letter is to inform you that my telephone service has been "slammed" for the second time. The service provider responsible for this act is :

Corporate Services
 7830 Freeway Circle, Suite C
 Middleburg Heights, OH 44130

In trying to inquire about my service with the carrier I was threatened with collection agencies if I did not pay. Also, they stated that they have my authorization to switch my accounts; although both my long distance and local carriers have a letter from me that require my written permission for any changes in my accounts. It is important for you to note that the first invoice I ever received from them already indicates that my account is past due and that they are members of 'Major Credit Reporting Agencies'.

Mr. Butterworth these illegal practises are extremely annoying, waste valuable time and money, and will not stop unless the penalties are severe.

Your attention to this matter will be greatly appreciated.

Sincerely,


 Edward Kassab

EXHIBIT 2

EXHIBIT 3:
Order Initiating Show Cause Proceedings against Commercial Ventures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of Show Cause)	DOCKET NO. 880240-TC
Proceedings Against COMMERCIAL)	ORDER NO. 19085
VENTURES, INC. for Failure to Comply)	ISSUED: 4-4-88
with Commission Rules)	
)	

The following Commissioners participated in the disposition of this matter:

KATIE NICHOLS, Chairman
 THOMAS M. BEARD
 GERALD L. GUNTER
 JOHN T. HERNDON
 MICHAEL MCK. WILSON

ORDER INITIATING SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

Rule 25-24.515, Florida Administrative Code, sets forth service standards regarding the operation of pay telephone service (PATS). The following sections of the rule are applicable to this docket:

(4) Each telephone station shall, without charge, permit access to local directory assistance and the telephone number of any person responsible for repairs or refunds but may provide access by coin return. Any long distance directory assistance charges applied to the pay telephone service company may be passed on to the customer.

(5) Each telephone station shall be equipped with a legible sign, card or plate of reasonable permanence which shall identify the following: telephone number and location address of such station, name or recognizable logo of the owner and the party responsible for repairs and refunds, address of responsible party, free phone number of responsible party, clear dialing instructions (including notice of the lack of availability of local or toll services), and, where applicable, a statement that the phone is not maintained by the local exchange company.

(6) Each telephone station which provides access to any interexchange company must provide access to all locally available interexchange companies.

(7) Each telephone station must allow incoming calls to be received, with the exception of those located at penal institutions, hospitals and schools, and at locations specifically exempted by the Commission. Where incoming calls are not received, intercept shall be provided. There shall be no charge for receiving incoming local calls.

(10) (a) Each pay telephone service company shall make all reasonable efforts to minimize the extent and duration of interruptions of service. Service repair programs should have as their objective the restoration of service on the same day that the interruption is reported to the company. (Sundays and holidays excepted).

(b) Each telephone utility shall conduct its operations in such manner to ensure that, in each exchange, ninety-five (95%) percent of all interruptions in telephone service occurring in any calendar month shall be cleared and service restored within twenty-four (24) hours (Sundays and holidays excepted) after the trouble is reported to the company, except where such interruptions are caused by emergency situations, unavoidable casualties and acts of God affecting large groups of subscribers.

Commercial Ventures, Inc., a certificated PATS subject to the jurisdiction of this Commission, repeatedly failed to comply with the above-identified rules. This Commission will not tolerate cavalier disregard of our rules by regulated utilities. Section 364.285, Florida Statutes, gives this Commission authority to impose a fine of up to \$5,000 per day for violation of Commission rules, each day constituting a separate offense. Accordingly, Commercial Ventures, Inc. is required to show cause, in writing, why a penalty of seven-thousand dollars (\$7,000) should not be assessed against it for its failure to comply with our rules.

BACKGROUND

This docket was initiated by a series of complaints received from the Everglades Hotel located at 244 Biscayne Boulevard, in Miami, Florida. The hotel complained that its PATS provider was providing unsatisfactory service to the hotel's seven pay telephones.

The hotel directed its complaints against Continental Pay-Tel, Inc. However, further investigation revealed that Commercial Ventures, Inc. was the PATS access line subscriber of record and therefore, responsible for compliance with Commission rules. Continental Pay-Tel, Inc. was acting under a contractual agreement with Commercial Ventures, Inc. to provide maintenance to the hotel's pay telephones.

On August 26, 1987, staff directed Commercial Ventures, Inc. to come in compliance with our rules within fifteen days. This letter was returned as undeliverable. On September 11, 1987, staff contacted the company by phone and was told that a new maintenance agreement had been entered into with Peoples Telephone Company. Commercial Ventures, Inc. was directed to reply to the hotel's complaints.

Commercial Ventures, Inc.'s response was received on October 5, 1987. However, it was unresponsive to staff's inquiries. Essentially, Commercial Ventures, Inc. labelled the hotel's complaints as exaggerated and hostile. However, both an unannounced Southern Bell Telephone and Telegraph Company service evaluation and an unannounced Commission staff evaluation confirmed that violations of our rules continued.

Commercial Ventures, Inc. was notified on these evaluations and responded on October 20, 1987 that the hotel's pay telephone complaints had been corrected. Relying on Commercial Ventures, Inc.'s representations, staff notified the hotel that the complaints had been satisfactorily resolved.

ORDER NO. 19085
DOCKET NO. 880210-TC
Page 3

On November 16, 1987, the hotel contacted staff to relay that the problems had not been corrected, and that neither Commercial Ventures, Inc. nor its service companies had contacted the hotel. The Everglades Hotel stated that it was referring its guests to the local exchange company's pay telephone located in the hotel's restaurant.

A contradiction exists between Commercial Ventures, Inc.'s statements to the hotel that the phones are in perfect order and its statements to staff that it had problems with its maintenance companies. We find that Commercial Ventures, Inc. has not acted responsibly to correct the legitimate complaints of the hotel. While there is uncertainty as to Commercial Ventures, Inc.'s contractual agreements with maintenance companies, this does not negate Commercial Ventures, Inc.'s (the certificated PATS subscriber of record) responsibility to comply with our rules. Accordingly, we find it appropriate to require Commercial Ventures, Inc. to show cause why it should not be fined \$7,000.

Commercial Ventures, Inc. is also directed to bring the pay telephones at the Everglades Hotel into compliance with our rules within thirty (30) days of the issuance date of this order.

This docket will remain open for six (6) months to provide staff with an opportunity to review Commercial Ventures, Inc.'s operations and at the conclusion of this period, to recommend whether an additional fine amount is warranted.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Commercial Ventures, Inc. shall show cause in writing why a penalty of seven-thousand dollars (\$7,000) should not be assessed against the utility for its failure to comply with Rule 25-24.515, Florida Administrative Code. It is further

ORDERED that the utility's written response to this show cause order must be received by the Director of Records and Reporting, 101 E. Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 25, 1988. It is further

ORDERED that any response filed by the utility must contain specific statements of law and fact. It is further

ORDERED that upon receipt of a response as outlined above, and upon the company's request, further proceedings will be scheduled by the Commission, at which time the company will have an opportunity to contest the violations alleged herein. It is further

ORDERED that the utility's failure to file a written response within the prescribed time period will constitute an admission of noncompliance and a waiver of any right to a hearing. It is further

ORDERED that Commercial Ventures, Inc. has thirty days from the date this order is issued to correct any and all rule violations relating to its pay telephone service at the Everglades Hotel located at 244 Biscayne Boulevard, in Miami, Florida. It is further

ORDER NO. 19085
DOCKET NO. 880240-TC
Page 4

ORDERED that this docket shall remain open for a period of six (6) months to allow staff an opportunity to monitor Commercial Ventures, Inc.'s operations and at the conclusion of such time, if appropriate, to recommend an additional fine.

By ORDER of the Florida Public Service Commission,
this 4th day of APRIL, 1988.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DWS

EXHIBIT 4:

**Excerpts of Deposition of Thomas Salzano, Minimum Rate Pricing President
New Jersey Department of Law & Public Safety, Division of Consumer Affairs**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

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In the Matter of:
MINIMUM RATE PRICING, INC.

Transcript of
Proceeding

-----x

Tuesday, March 4, 1997
Newark, New Jersey

A P P E A R A N C E S:

LOUIS A. JONAS, Investigative Supervisor
MICHAEL A. SIMON, Investigator

HELEIN & ASSOCIATES, P.C.
Attorneys for Minimum Rate Pricing, Inc. and
Thomas Salzano
BY: CHARLES H. HELEIN, ESQ

FRIIS ASSOCIATES
Certified Shorthand Reporters
P.O. Box 84
WOODBIDGE, NEW JERSEY 07095
1-800-636-1136

1 (One-page document entitled Minimum
2 Rate Pricing, Inc. Script received and marked S-1
3 for identification.)

4 (Brochure entitled Minimum Rate
5 Pricing Incorporated received and marked S-1 for
6 identification.)

7 (Multi-page document entitled Program
8 Enrollment Terms Amended and Restated received and
9 marked S-3 for identification.)

10 (Two-page document entitled M.R.P.
11 Verbatim Required Verification Script Commercial
12 with Separate Verifier received and marked S-4 for
13 identification.)

14 (Two-page document entitled M.R.P.
15 Verbatim Required Verification Script Residential
16 with Separate Verifier received and marked S-5 for
17 identification.)

18 T H O M A S N. S A L Z A N O, residing at 339
19 Ridgewood Avenue, Glen Ridge, New Jersey 07028,
20 having been duly sworn by the reporter, testified
21 as follows:

22 DIRECT EXAMINATION BY MR. SIMON:

23 MR. SIMON: Mr. Helein, before we
24 begin, why don't you put your appearance on the
25 record, too.

1 A Prior to Minimum Rate Pricing?

2 Q Prior to Minimum Rate Pricing.

3 A No.

4 Q What is your title with Minimum Rate?

5 A President.

6 Q Would you also be president of

7 National Tele-Communications?

8 A I am.

9 Q Would you also be president of Parcel

10 Consultants?

11 A Yes.

12 Q Is Parcel Consultants -- they are the

13 umbrella corporation to National

14 Tele-Communications and Minimum Rate Pricing?

15 A That's correct.

16 Q Are you also a shareholder in any of

17 those three companies?

18 A Yes, I am. I am the primary shareholder.

19 Q Are either of these three companies a

20 publicly-traded corporation?

21 A No.

22 Q I'm going to concentrate on Minimum

23 Rate Pricing for the time being. As president with

24 that firm, Minimum Rate Pricing, what are your job

25 responsibilities?

1 A To oversee the overall direction, marketing,
2 customer service, finance and operations of the
3 company.

4 Q You have people that report to you
5 that handle each of those specific areas; is that
6 correct?

7 A Yes.

8 Q Ultimately though, you would be the
9 person to make decisions regarding any aspects that
10 come under those responsibilities you just gave me?

11 A That is correct. I am the responsible party
12 for all policy decision-making processes,
13 direction.

14 Q Just so I understand correctly, that
15 would include advertising by the firm; is that
16 correct?

17 A That is correct.

18 Q It would include any action that would
19 be taken regarding consumer complaints; is that
20 correct?

21 A Yes.

22 Q Would it include any decisions
23 involving the product being offered by Minimum Rate
24 Pricing?

25 A Yes.

1 their selection of us as their carrier in the mail,
2 that, you know, they'll have to sign for it
3 obviously, and that their discounts and service
4 with Minimum Rate Pricing would begin approximately
5 15 days after they get that mail piece.

6 Q And what is contained in that mail
7 piece that is sent out?

8 A The mail piece is a reiteration of the
9 conversation we've already had with the customer.
10 The mail piece -- that says it.

11 MR. SIMON: Do you have any questions?

12 MR. JONAS: No.

13 Q I'm going to go through some of the
14 material that was previously provided by your
15 office. There are some aspects of some of this
16 material that is confusing. I'd like you to help
17 me out with this. I'm going to show you first what
18 we've previously marked before we began as S-1. It
19 is a Minimum Rate Pricing Incorporated script for
20 commercial users. Do you recognize this document?

21 A Yes.

22 Q Did I accurately describe it? This is
23 a sample script that would be used by your
24 telemarketers to sell products -- your product to
25 commercial users; is that correct?

1 A Yes.

2 Q Is this script used exclusively? Are
3 there other scripts that would be used to sell the
4 product to commercial users?

5 A There are other scripts, and we've provided
6 you all of them.

7 Q But this is a sample of one that is
8 currently used; is that correct?

9 A Yes, that is correct.

10 Q As president of Minimum Rate Pricing,
11 ultimately you would have made the decision as to
12 whether this would be one of several scripts for
13 commercial purposes that would be used?

14 A Yes.

15 Q You gave approval for this as one?

16 A Yes.

17 Q At the top of the document it
18 refers -- at the top of the document it refers to
19 a -- let me quote here. "I am a notifying operator
20 with Minimum Rate Pricing." What is a notifying
21 operator?

22 A That is a salesperson and that is our
23 telemarketing operator.

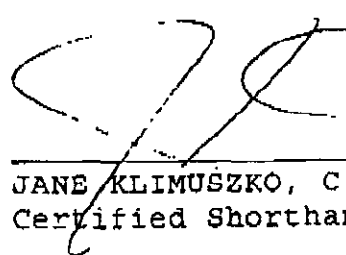
24 Q Also at the top of the document it
25 refers to Minimum Rate long distance service?

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C E R T I F I C A T E

I, JANE KLIMUSZKO, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



JANE KLIMUSZKO, C.S.R.
Certified Shorthand Reporter

**EXHIBIT 5:
Minimum Rate Pricing Scripts**

Minimum Rate Pricing, Inc. Script

Who:

Hello. Is this Mr./Mrs. _____ ? I need to speak to Mr./Mrs. _____. Is that you sir/ ma'am?
I'm a Notifying Operator with Minimum Rate Pricing, Inc. long distance service.

What:

This is just a good news notification call for credit preferred AT&T, MCI, and Sprint users notifying you of new Minimum Rate Pricing tariffs filed. Starting next month a 25% peak rate discount will now be available to you on all your long distance calls billed on your local phone bill!

Why:

Sir/ Ma'am this is not a temporary rate reduction. This is an on going FCC authorized savings in how your long distance calls will be rated. The plan is called "Minimum Rate Pricing, Inc." - you may want to write that down.

What's happened is that under FCC rules AT&T, MCI, Sprint, and Wiltel must allow the "minimum rate pricing" of your calls so that you're no longer limited to a major carrier's rates and expensive surcharges. With minimum rate services your calls will automatically rate via the cheapest carrier rates available so you get the lowest cost of calling for your long distance calls billed on the local phone bill.

Now, Sir/ Ma'am, you need to be spending an average of at least \$10 per month to receive this limited offer. Do you average \$10 per month in long distance? Great!

How:

Now, are you already billed on the local bill for your long distance charges or do you receive a separate long distance bill? OK, great! Under Minimum Rate Pricing your underlying carrier either AT&T, MCI, Sprint, or Wiltel will be automatically selected for you and all your calls will be consolidated with the local phone bill so you have the ease and convenience of just one check to write!

Now, I show the following information for you: (data Gathering Part of Script)

CONFIRM: Name on the lead. Address on the lead. BTN on the lead. Then ask the customer for the additional WTN's, fax and modem. Then ask if they have any additional BTN's. If so, get all that information . Write it on the BTN order form. Get the exact phone usage for each BTN.

When:

Now, all I need to do to activate your 25% discounted service will be to get my supervisor and he/she will verify the information we just went over. He/She will be taping it for accuracy, please let him/her know if he/she makes a mistake. it only takes a minute.

GO TO VERIFICATION SCRIPT NOW: DON'T FORGET TO TURN ON THE TAPE!

Minimum Rate Pricing, Inc. Script

Who:

Hello, I would like to speak with the person who makes decisions regarding your company's long distance service.

What:

Hello, this is _____ with Minimum Rate Pricing Inc. Long Distance Service. I'm calling in regards to our discounted long distance program which utilizes the AT&T, MCI, Sprint or Witel long distance networks. Due to our tremendous purchasing power, we are able to guarantee our customers a 25% peak time discount off the major carrier's rates without restrictions!

Why:

The plan is called Minimum Rate Pricing because at all times you will be receiving the greatest billing discounts available through Minimum Rate Pricing's LEAST COST RATING. This guarantees that each long distance call you make will be rated over a major carrier's network pricing at a 25% peak time discount. How does that sound? Great!

In order to set up your new Minimum Rate Pricing account, I need some information:

How:

Now, are you already billed on the local bill for your long distance charges or do you receive a separate long distance bill? OK, great! Under Minimum Rate Pricing your underlying carrier either AT&T, MCI, Sprint, or Witel will be automatically selected for you and all your calls will be consolidated with the local phone bill so you have the ease and convenience of just one check to write!

Now, I show the following information for you: (data Gathering Part of Script)

CONFIRM: Name on the lead. Address on the lead. BTN on the lead. Then ask the customer for the additional WTN's, fax and modem. Then ask if they have any additional BTN's. If so, get all that information . Write it on the BTN order form. Get the exact phone usage for each BTN.

When

Now, all I need to do to activate your 25% discounted service will be to verify the information we just went over. I will be taping it for accuracy, please let me know if I make a mistake, it only takes a minute.

GO TO VERIFICATION SCRIPT NOW: DON'T FORGET TO TURN ON THE TAPE!

CONFIDENTIAL

APRIL 10, 1990 UNTIL 1991

COMMERCIAL

MINIMUM RATE PRICING, INC. SCRIPT

Who:

Yes, hello. I need to speak to the owner please. Are they available?

This is (your full name) calling from Minimum Rate Pricing, Inc., about a tremendous new service available to your firm for all your long distance calls. How are you today? Great!

What:

Minimum Rate Pricing, Inc. is a buying group of discounted long distance users purchasing services from national carriers. Due to the group's vast purchasing power, we guarantee you a 25% peak period discount off national carrier rates without restrictions!

Why:

Through Minimum Rate Pricing, Inc. you'll be utilizing the AT&T, MCI, Sprint, Wiltel and other national fiber optic networks, but will obtain our group savings. The plan is called Minimum Rate Pricing because at all times you'll be receiving the greatest billing discounts available appointing us as your agent to select multiple carriers for you. Now, do you spend at least \$10 per month as a mid-size user of long distance? Great!

How:

Now, are you already billed on the local bill for your long distance charges or do you receive a separate long distance bill? OK, great! Under Minimum Rate Pricing your underlying carrier either AT&T, MCI, Sprint, or Wiltel will be automatically selected for you and all your calls will be consolidated with the local phone bill so you have the ease and convenience of just one check to write!

Now, I show the following information for you: (data Gathering Part of Script)

CONFIRM: Name on the lead. Address on the lead. BTN on the lead. Then ask the customer for the additional WTN's, fax and modem. Then ask if they have any additional BTN's. If so, get all that information. Write it on the BTN order form. Get the exact phone usage for each BTN.

When:

Now, all I need to do to activate your 25% discounted service will be to verify the information we just went over. I will be taping it for accuracy, please let me know if I make a mistake, it only takes a minute.

GO TO VERIFICATION SCRIPT NOW: DON'T FORGET TO TURN ON THE TAPE!

MINIMUM RATE PRICING, INC. SCRIPT

Who:

ID Yourself

ID Your Tariff Consulting Company, E.G. Pacific Tele-Consultants, Inc.

I need to speak to the person in charge of decisions regarding the long distance phone bill, please.

What

My name is _____ with (ID your consulting co), we're consultants to corporate telecommunications users. I'm calling to inform you that, under new FCC approved tariffs, you can receive a 25% peak rate discount on the cost of your long distance calls, by using a service known as Minimum Rate Pricing, Inc., long distance. The **only requirement** is that you do \$10 per month or more in long distance charges.

Do you spend more then \$10 per month on long distance? O.K. Great!

Why

In the past the FCC has declared **through equal access rulings that companies need not be limited to just one carrier's rates or surcharges.** Through tariffs filed by Minimum Rate Pricing, Inc. you can utilize major carriers such as AT&T, MCI, Sprint or Witel, and **get the cheapest rates available during key demands periods.** Your company can receive this **FCC filed 25% peak time discount** through Minimum Rate Pricing, Inc., starting as early as next month.

How:

Now, are you already billed on the local bill for your long distance charges or do you receive a separate long distance bill? OK, great! Under Minimum Rate Pricing your underlying carrier either AT&T, MCI, Sprint, or Witel will be automatically selected for you and all your calls will be **consolidated with the local phone bill** so you have the ease and convenience of **just one check to write!**

Now, I show the following information for you: (data Gathering Part of Script)

CONFIRM: Name on the lead. Address on the lead. BTN on the lead. Then ask the customer for the additional WTN's, fax and modem. Then ask if they have any additional BTN's. If so, get all that information . Write it on the BTN order form. Get the exact phone usage for each BTN.

When:

Now, all I need to do to activate your 25% discounted service will be to verify the information we just went over. I will be taping it for accuracy, please let me know if I make a mistake, it only takes a minute.

GO TO VERIFICATION SCRIPT NOW: DON'T FORGET TO TURN ON THE TAPE!

Minimum Rate Pricing, Inc. Script

Who:

Hello. This is _____. I need to speak to the person in charge of the phone account. Is that you sir/ ma'am? I'm a Notifying Operator with Minimum Rate Pricing, Inc. long distance service.

What:

This is just a good news notification call for credit preferred AT&T, MCI, and Sprint users notifying you of new Minimum Rate Pricing tariffs filed. Starting next month a 25% peak rate discount will now be available to you on all your long distance calls billed on your local phone bill!

Why:

Sir/ Ma'am this is not a temporary rate reduction. This is an on going FCC authorized savings in how your long distance calls will be rated. The plan is called "Minimum Rate Pricing, Inc." - you may want to write that down.

What's happened is that under FCC rules AT&T, MCI, Sprint, and Wiltel must allow the "minimum rate pricing" of your calls so that you're no longer limited to a major carrier's rates and expensive surcharges. With minimum rate services your calls will automatically rate via the cheapest carrier rates available so you get the lowest cost of calling for your long distance calls billed on the local phone bill.

Now, Sir/ Ma'am, you need to be spending an average of at least \$10 per month to receive this limited offer. Do you average \$10 per month in long distance? Great!

How:

Now, are you already billed on the local bill for your long distance charges or do you receive a separate long distance bill? OK, great! Under Minimum Rate Pricing your underlying carrier either AT&T, MCI, Sprint, or Wiltel will be automatically selected for you and all your calls will be consolidated with the local phone bill so you have the ease and convenience of just one check to write!

Now, I show the following information for you: (data Gathering Part of Script)

CONFIRM: Name on the lead. Address on the lead. BTN on the lead. Then ask the customer for the additional WTN's, fax and modem. Then ask if they have any additional BTN's. If so, get all that information. Write it on the BTN order form. Get the exact phone usage for each BTN.

When:

Now, all I need to do to activate your 25% discounted service will be to verify the information we just went over. I will be taping it for accuracy, please let me know if I make a mistake. it only takes a minute.

GO TO VERIFICATION SCRIPT NOW: DON'T FORGET TO TURN ON THE TAPE

CONFIDENTIAL

APRIL 10, 1980 WITEL VERIFICATION

Exhibit 1

RESIDENTIAL

MINIMUM RATE PRICING, INC. SCRIPT

Who:

Yes, hello. I need to speak to the person in charge of decisions regarding the long distance service please? Do you know who that is?

What:

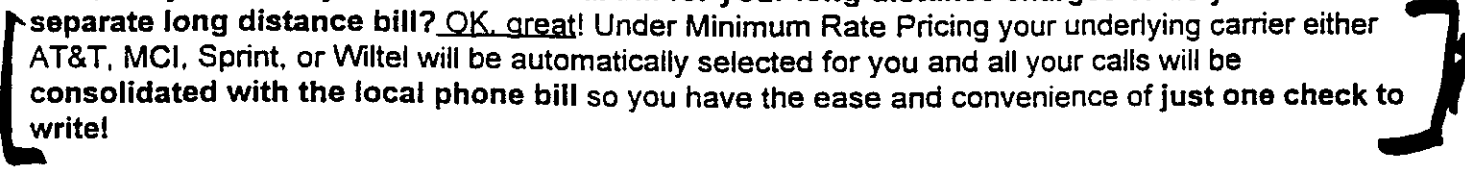
Yes. This is (your full name) calling from Minimum Rate Pricing, Inc., about new discounts available to you for all your long distance calls. How are you today? Great!

Why:

Minimum Rate Pricing is a volume purchasing group of long distance time utilizing the AT&T, MCI, Sprint, Witel, and other national fiber optic networks. The plan is called Minimum Rate Pricing because at all times you'll be receiving the greatest peak time billing discounts available appointing us as your agent to select multiple carriers for you. **Now, do you spend at least \$10 per month as a mid-size user of long distance? Great!**

How:

Now, are you already billed on the local bill for your long distance charges or do you receive a separate long distance bill? OK, great! Under Minimum Rate Pricing your underlying carrier either AT&T, MCI, Sprint, or Witel will be automatically selected for you and all your calls will be consolidated with the local phone bill so you have the ease and convenience of just one check to write!



Now, I show the following information for you: (data Gathering Part of Script)

CONFIRM: Name on the lead. Address on the lead. BTN on the lead. Then ask the customer for the additional WTN's, fax and modem. Then ask if they have any additional BTN's. If so, get all that information . Write it on the BTN order form. Get the exact phone usage for each BTN.

When:

Now, all I need to do to activate your 25% discounted service will be to verify the information we just went over. I will be taping it for accuracy, please let me know if I make a mistake, it only takes a minute.

GO TO VERIFICATION SCRIPT NOW: DON'T FORGET TO TURN ON THE TAPE!

Minimum Rate Pricing, Inc. Script

Who:

Hello. This is _____ with Minimum Rate Pricing. I need to speak with the person in charge of the phone account. Is that you sir/ma'am? As I said, this is _____, I'm a Notifying Operator with Minimum Rate Pricing, Inc. long distance service.

What:

This is an important offering notification call for credit preferred AT&T, MCI, and Sprint users notifying you of new Minimum Rate Pricing, Inc. tariffs filed. Starting next month a 25% rate discount will now be available to (INSERT PHONE NUMBERS) on all interstate calls billed on your local phone bill through Minimum Rate Pricing, Inc.

Qualifying Question

Now Mr/Ms _____. You do average \$10 per month in long distancecorrect?

Why:

Sir/ Ma'am you need to understand this is not a temporary change or rate reduction. This is an on going FCC authorized service and discount in how your interstate calls will be rated. The program is called "Minimum Rate Pricing, Inc." - you may want to write that down.

What's happening is, under FCC tariffs filed, Minimum Rate Pricing compares the prevailing basic interstate rates of the major carriers, AT&T, MCI, and Sprint. The lowest rate is selected and a 25% base rate discount applied. With the change to Minimum Rate services you are no longer restricted to just one major carrier's rates and expensive surcharges.

How:

Now, are you already billed on the local bill for your long distance charges or do you receive a separate long distance bill? Great! All your long distance calls will now be consolidated with the local phone bill, so you have only one check to write, and your underlying carrier will be automatically selected for you.

Data Gathering and Q&A: "Now, what questions do you have?"

Note: Answer each customer question regarding switching and rates using the verbatim required script answers attached. If the customer has a special discount/ flat rate plan then enter into a flat rate negotiation with the customer.

Now, I show the following information for you: Data Gathering and Q&A:

1. I show the spelling of the billing name as (FIRST AND LAST NAME) (If Initials please ask for full name)
2. And the address as (STREET, CITY, STATE, ZIP).
3. And I am speaking with (REPEAT FULL NAME)?
4. And this will be billed to (AREA CODE AND PHONE NUMBER?)

When:

Now, all I need to do to activate your 25% discounted service will be to verify the information we just went over. I will be taping it for accuracy, please let me know if I make a mistake, it only takes a minute. I will be asking you a few questions that require a "yes" or "no" answer. Before answering "no" feel free to ask me if you are unsure. Do you have any questions before we begin?

GO TO VERIFICATION SCRIPT NOW: DON'T FORGET TO TURN ON THE TAPE!

Minimum Rate Pricing, Inc. Script

Who:

Hello. This is _____ with Minimum Rate Pricing. I need to speak with the person in charge of the phone account. Is that you sir/ ma'am? As I said, this is _____, I'm a Notifying Operator with Minimum Rate Pricing, Inc. long distance service.

What:

This is an important offering notification call for credit preferred AT&T, MCI, and Sprint users notifying you of new Minimum Rate Pricing, Inc. tariffs filed. Starting next month a 25% rate discount will now be available to (INSERT PHONE NUMBERS) on all interstate calls billed on your local phone bill through Minimum Rate Pricing, Inc.

Qualifying Question

Now Mr/Ms _____. You do average \$10 per month in long distancecorrect?

Why:

Sir/ Ma'am you need to understand this is not a temporary change or rate reduction. This is an on going FCC authorized service and discount in how your interstate calls will be rated. The program is called "Minimum Rate Pricing, Inc." - you may want to write that down.

What's happening is, under FCC tariffs filed, Minimum Rate Pricing compares the prevailing basic interstate rates of the major carriers, AT&T, MCI, and Sprint. The lowest rate is selected and a 25% base rate discount applied. With the change to Minimum Rate services you are no longer restricted to just one major carrier's rates and expensive surcharges.

How:

Now, are you already billed on the local bill for your long distance charges or do you receive a separate long distance bill? Great! All your long distance calls will now be consolidated with the local phone bill, so you have only one check to write, and your underlying carrier will be automatically selected for you.

Data Gathering and Q&A: "Now, what questions do you have?"

Note: Answer each question regarding switching and rates using the verbatim required script answers attached. If the customer has a special discount/ flat rate plan then enter into a flat rate negotiation with the customer.

Now, I show the following information for you:

Data Gathering and Q&A:

1. I show the spelling of the billing name as (COMPANY NAME)
2. And the address as (STREET, CITY, STATE, ZIP).
3. And I am speaking with (REPEAT FULL NAME)?
4. And this will be billed to (AREA CODE AND PHONE NUMBER)?

When:

Now, all I need to do to activate your 25% discounted service will be to verify the information we just went over. I will be taping it for accuracy, please let me know if I make a mistake, it only takes a minute. I will be asking you a few questions that require a "yes" or "no" answer. Before answering "no" feel free to ask me if you are unsure. Do you have any questions before we begin?

GO TO VERIFICATION SCRIPT NOW: DON'T FORGET TO TURN ON THE TAPE!