

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for waiver of) DOCKET NO. 961143-TI
penalty related to late payment) ORDER NO. PSC-97-0522-FOF-TI
of regulatory assessment fees,) ISSUED: May 7, 1997
by Excel Telecommunications,)
Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER DISMISSING WAIVER REQUEST

BY THE COMMISSION:

On August 7, 1996, the Bureau of Fiscal Services advised Excel Telecommunications, Inc., (Excel) that payment of its regulatory assessment fee for the period January 1, 1996, through June 30, 1996, was received late. As a result, Excel was to remit penalty and interest charges in the total amount of \$1,013.32, pursuant to Section 350.113(4), Florida Statutes, by August 21, 1996. Excel responded by letter dated September 10, 1996, stating that the late payment was not due to willful neglect, but reasonable cause. It requested that we waive the penalty and associated interest.

Excel acknowledged that payment of its regulatory assessment fee was due on July 30, 1996. It stated that its tax department was processing 324 returns due on July 30 and 86 returns due on July 31, and that the return to this Commission was inadvertently placed in the stack of returns due on July 31. Excel noted that its payment history with us is excellent and that it has taken steps to avoid repetition of the error that led to the present late payment.

Section 350.113(3), Florida Statutes, provides as follows:

Each regulated company under the jurisdiction of the commission ... shall pay to the commission within 30 days following the end of each 6-month period ... a fee based upon the

DOCUMENT NUMBER-DATE
04492 MAY-76
FPSC-RECORDS/REPORTING

gross operating revenues for such period
subject to the limitations of this subsection.

Section 350.113(4), Florida Statutes, moreover, provides as follows:

The commission shall provide each regulated company with written notice of the date that payment of the fee is due at least 45 days prior to such date. If any regulated company fails to pay the required fee by such date, the commission shall estimate the amount of fee due from such information as it may be able to obtain from any source and shall add 5 percent of such amount to the fee as a penalty if the failure is for not more than 30 days ... The commission shall collect the fee and penalty, plus interest and all costs of collection, from the regulated company.

In addition, Rule 25-4.0161(2), Florida Administrative Code, provides as follows:

Telecommunications companies that owed gross regulatory assessment fees of \$10,000 or more for the preceding calendar year shall pay the fee and remit the appropriate form twice a year. The regulatory assessment fee and appropriate form shall be filed no later than July 30 for the preceding period of January 1 through June 30.

See also, Section 364.336, Florida Statutes. Excel's regulatory assessment fee for the period January 1 through June 30, 1996, was \$16,888.58.

We find it appropriate to dismiss Excel's request for waiver. We are not vested with the authority to waive fees or penalties and interest. In Order No. PSC-94-1464-FOF-WU, issued November 29, 1994, in Dockets Nos. 940973-WU and 940974-WU, we said:

Pursuant to Section[] 350.113(4) ... and Rule 25-30.120(4), Florida Administrative Code, we are required to collect interest, penalties and collection costs from a delinquent regulatory company. Neither the Florida Statutes nor the Commission Rules provide us

ORDER NO. PSC-97-0522-FOF-TI
DOCKET NO. 961143-TI
PAGE 3

with discretion to waive fees, penalties and interest.

Rule 25-30.120, Florida Administrative Code, contains provisions governing the remittance of regulatory assessment fees by regulated water and wastewater utilities that are substantially the same as the provisions of Rule 25-4.0161(2), Florida Administrative Code.

Accordingly, we direct the company to make payment of the assessed penalty (\$843) within 30 days of this Order, with interest accruing to the date of payment.

This docket shall be closed administratively upon receipt of the required payment.


Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Excel Telecommunications, Inc.'s request for waiver of penalty and associated interest as herein described is dismissed. It is further

ORDERED that Excel Telecommunications, Inc., shall make payment of the penalty, together with interest accruing to the date of payment, within 30 days of this Order. It is further

ORDERED that this docket shall be closed upon receipt of payment.

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

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.