

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|--|---|----------------------|
| In re: Initiation of show cause |) | DOCKET NO. 900899-TI |
| proceedings against SELECTEL |) | ORDER NO. 25632 |
| CORPORATION for violation of Rule |) | ISSUED: 1/24/92 |
| 25-24.470, F.A.C., Certificate of Public |) | |
| Convenience and Necessity Required |) | |

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

ORDER IMPOSING FINE

BY THE COMMISSION:

By Order No. 24154, issued February 25, 1991, we ordered Selectel Corporation (Selectel or the Company) to show cause in writing why it should not be fined \$3000.00 for reselling long distance telephone service without first obtaining a certificate of public convenience and necessity as required by Rule 25-24.470, Florida Administrative Code. The show cause order was issued against Selectel for aggregating telecommunications usage of unaffiliated parties to allow the parties to obtain discounts from their primary IXCs. The Order required a written response by March 18, 1991; however, Selectel did not respond to the order.

On April 15, 1991, our Staff sent a set of interrogatories to Mr. James Truher, Selectel's president, to determine whether Selectel was still operating in Florida, and what further proceedings should be initiated. Selectel contended that it was not operating as a telephone company as the parties were billed by the IXCs. But, Selectel charged the parties a one-time processing fee and shared in the discount savings of the end-user parties. Our Staff had several contacts with the Company to encourage the filing of an application for an IXC certificate.

On September 17, 1991, Mr. Truher stated in a telephone deposition that he would file the necessary documents to request certification as an interexchange carrier. His previous correspondence had stated that Selectel had terminated its contract with AT&T and no regulated telecommunications service had been offered in Florida since November 1990. However, his deposition statements indicated that the Company had plans to aggregate traffic from universities, hospitals and hotels.

DOCUMENT NUMBER-DATE

00897 JAN 24 1992

FPSC-RECORDS/REPORTING

ORDER NO. 25632
DOCKET NO. 900899-TI
PAGE 2

We believe that Selectel intends to continue offering telecommunications services as an aggregator of unaffiliated entities' traffic usage to obtain discounted prices from major IXCs. Although the Multi-Location Plan Aggregator (MLPA) agreement between AT&T and Selectel may be terminated, Selectel indicated that it has a similar agreement with MCI which it plans to implement with hotels, colleges and universities.

Rule 25-22.037(1) requires that an answer to an order by the Commission which asserts a violation of a statute, rule, or order shall be filed within 20 days of the issuance of the order. Selectel did not respond to Order No. 24154. Additionally, Rule 25-22.037(3) states that failure to timely respond constitutes an admission of all facts set forth in the order. Thus, Selectel has admitted the allegations in Order No. 24154, and continues to operate as an interexchange carrier.

Although Selectel failed to respond in a timely manner, our Staff made every attempt to assist the company in filing an application for an IXC certificate, believing that the company was making a good faith effort to comply with Commission rules. However, Selectel failed to meet application requirements, and at the January 7, 1992 agenda conference, we decided to deny the Company's application for an IXC certificate. We believe that Selectel has had sufficient time and opportunity to comply with our requirements. Therefore, we hereby impose the \$3000.00 fine proposed by Order No. 24154. Additionally, we direct Selectel to discontinue operating as an IXC in Florida. If the Company continues to operate as an IXC without a certificate, as required by Rule 25-24.470, then it shall be subject to a fine of up to \$25,000 per day, pursuant to Section 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Selectel Corporation shall pay a fine in the amount of \$3000.00, payable within 30 days of the issuance of this Order. It is further

ORDERED that Selectel Corporation shall discontinue operating as an interexchange carrier in violation of Rule 25-24.470, Florida Administrative Code, or it will be subject to additional fines of up to \$25,000 per day. It is further

ORDER NO. 25632
DOCKET NO. 900899-TI
PAGE 3

ORDERED that if Selectel Corporation remits the \$3000.00 fine within 30 days of the issuance of this Order, and provides this Commission with an affidavit stating that it is not operating as an interexchange carrier, then this docket shall be closed. Otherwise, this docket shall remain open pending further proceedings.

By ORDER of the Florida Public Service Commission, this 24th day of JANUARY, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

PAK

By: Kay Hepp
Chief, Bureau of Records

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.

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 within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida

ORDER NO. 25632
DOCKET NO. 900899-TI
PAGE 4

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 or sewer 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.