

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation of ) DOCKET NO. 950468-TI  
marketing practices of EXCEL ) ORDER NO. PSC-95-1470-FOF-TI  
TELECOMMUNICATIONS, INC. ) ISSUED: November 28, 1995  
\_\_\_\_\_ )

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

ORDER TO SHOW CAUSE

BY THE COMMISSION:

On April 20, 1995, the Office of Public Counsel (OPC), filed a petition to revoke the interexchange telecommunications certificate of Excel Telecommunications, Inc. (Excel), or, in the alternative, to fine Excel, for an alleged violation of Rule 25-4.118, Florida Administrative Code. Under Rule 25-4.118, Florida Administrative Code, a customer's primary interexchange carrier (PIC) may not be changed unless certain procedures are followed.

In addition to OPC's petition, between January 1, 1995, and September 30, 1995, this Commission received 35 complaints against Excel from customers alleging unauthorized PIC changes. We have reviewed 19 of these complaints, and it appears that a number of them merit further examination. The remaining 16 complaints were still open as of September 30, 1995, pending a response by Excel.

We are also informed that, on August 18, 1995, the Federal Communications Commission (FCC) issued a Notice of Apparent Liability for Forfeiture, by which it alleged that Excel caused two customers' PICs to be changed without their authorization, in violation of FCC rules and orders, and found that Excel was apparently liable for a forfeiture in the amount of \$80,000.

Accordingly, pursuant to Section 364.285, Florida Statutes, we find it appropriate to require Excel to show cause, in writing, within twenty days of the date of this Order, why it should not be fined \$1,000 for each alleged violation of Rule 25-4.118, Florida Administrative Code, for a total of \$35,000. Excel's response must contain specific allegations of fact and law. If it fails to file

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a timely response, such failure shall constitute an admission of the facts alleged herein and a waiver of any right to a hearing.

It is, therefore,

ORDERED by the Florida Public Service Commission that Excel Telecommunications, Inc. shall show cause, in writing, why it should not be fined \$1,000 for each alleged violation of Rule 25-4.118, Florida Administrative Code, for a total of \$35,000. It is further

ORDERED that Excel Telecommunications, Inc.'s response must contain specific allegations of fact and law. It is further

ORDERED that Excel Telecommunications, Inc.'s response must be received by the Director of the Division of Records and Reporting within twenty (20) days of the date of this Order. It is further

ORDERED that, if Excel Telecommunications, Inc. fails to file a timely response, such failure shall constitute an admission of the facts alleged herein and a waiver of any right to a hearing.

By ORDER of the Florida Public Service Commission, this 28th day of November, 1995.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

RJP

Chairman Susan F. Clark and Commissioner J. Terry Deason dissented.

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.

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 18, 1995.

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.