

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against World Access Communications Corp. for violation of Rule 25-24.4701, F.A.C., Provisions of Regulated Communications Service to Uncertified Resellers Prohibited.

DOCKET NO. 960216-TI
ORDER NO. PSC-96-0646-FOF-TI
ISSUED: May 10, 1996

**WORLD ACCESS COMMUNICATIONS
CORP.'S PREHEARING STATEMENT**

Pursuant to Order No. PSC-97-0046-PCO-TI, World Access Communications Corp. (hereinafter "World Access") files its Prehearing Statement.

- A. All Known Witnesses: World Access proposes to call Joel Esquenazi, President and Carlos Rodriguez, Vice-President, as witnesses to offer direct testimony. World Access reserves the right to call additional witnesses, witnesses to respond to Commission inquiries not addressed in direct testimony, and witnesses to respond to Commission inquiries not in direct testimony, and witnesses to address issues not presently designated that may be designated at the prehearing conference to be held on May 12, 1997.
- B. All Known Exhibits: Listed below is a tentative list of exhibits which World Access intends to utilize in this proceeding. World Access reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Civil Procedure and the Rules of this Commission.

Witness	Document Indicator	Exhibit Register
Joel Esquenazi		November/December 1995 Calls Correspondent; Bill from World Access for Service to Telecuba
		World Access v. Telecuba Verified Complaint, Dade County Circuit Court, Case No.: 96-00828
		World Access Florida Inter-exchange Carrier Tariff, effective 11/11/95
Carlos Rodriguez		World Access Florida Proposed Inter-exchange Carrier Tariff, submitted to the Public Service Commission on 4/___/97
		Listing of Calling Card usage by Telecuba for the period from _____ to _____
		Letter terminating Telecuba's service

ACK 3
AFA _____
APP 1
CAF _____
CMU 1
CTR _____
EAG _____
LEG 2
LIN 3
OPC _____
RCH _____
SEC 1
WAS _____
OTH _____

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C. World Access' Statement of Basic Position:

As a preliminary matter it should be noted that undersigned counsel has made a search of the Florida Statutes and the Florida Administrative Code and has discovered no rules, regulations or administrative decisions which directly relate to the business of selling prepaid calling cards. World Access understands that the Staff is in the process of developing such regulations. Consequently, the applicability of the present regulations to the instant situation is problematical. Further, World Access wishes to note that all of the telephone time sold by Telecuba was sold exclusively for international calls. No time was sold for intrastate calling.

World Access Did Not Violate
Rule 25-24.4701, Florida Administrative Code

World Access should not be fined by the Commission for any alleged violation(s) of Rule 25-24.4701, Florida Administrative Code, which prohibits a certificated inter-exchange company from providing telecommunications service on an intrastate basis in Florida, to an uncertificated inter-exchange company for the purpose of reselling or rebilling intrastate inter-exchange telecommunications services to the general public.

World Access has previously provided the Staff a copy of World Access' Verified Complaint for Damages and Equitable Relief, which was filed against Telecuba and its President and sole shareholder, Luis G. Coello ("Coello"), among others, styled *World Access Communications Corp. v. Telecuba, Inc.*, Circuit Court Case No.: 96-00828 CA (23) (the "Complaint"). As set forth in the Complaint World Access entered into an agreement with Telecuba, in which World Access was to become a 50% shareholder of Telecuba. The parties agreed that World Access would provide Telecuba with, among other things: (1) use of World Access' long-distance telecommunications services for the sale, marketing and distribution of Telecuba's pre-paid debit calling cards for sale to the general public; and (2) use of several 1-(800) numbers, which accounts had been established in the name of World Access.

Although Telecuba was, in fact, a "telecommunications company" as defined in Florida Statutes, § 364.02, in connection with the sale of the Telecuba pre-paid cards, Telecuba was not offering its services as a telecommunications "carrier" or "provider" as defined by the Florida Administrative Code to their respective end user debit calling card customers. Therefore, Telecuba was not engaging in the reselling or rebilling of independents inter-exchange telecommunication services in the state of Florida for which World Access was governed, in this instance, under Rule 25-24.4701, F.A.C., since all incoming and/or outgoing pre-paid debit card customer calls ran through World Access' own telecommunications networking system and exclusive 1-(800).

Further, inasmuch as Telecuba was only marketing and selling pre-paid debit cards to the general public through various vendors in the State of Florida, World Access, as a certificated inter-exchange company, did not believe or "expect" that Telecuba was reselling or reselling its services for which Telecuba was required to possess a Certificate of Public Convenience and Necessity, in violation of the Rule 25-24.4701(I), F.A.C., for which the Commission should impose a fine. Further, World Access believes that the fine proposed by the Staff is excessive and not warranted by the facts in this matter, especially given the fraud of Telecuba and Coello as more fully set forth in the Complaint.

World Access Should Not be Responsible for the
Fraudulent and Improper Acts of Telecuba

At all times material hereto, Telecuba, by Coello, represented to World Access that Telecuba was in compliance with all applicable federal and state regulations (including Rule 25-24.4701, Florida Administrative Code). World Access believed Coello's fraudulent promises that he would

issue World Access the shares in Telecuba that he had promised, and therefore believed that Telecuba (under World Access' supervision) would be operated in a manner so as to ensure compliance with all applicable laws.

Even if, based on the foregoing facts, it is determined that Telecuba was a marketing agent for World Access, Telecuba, not World Access, should be primarily responsible for any refunds due relating to improper sales of calling cards to the public. As set forth in the Complaint, Telecuba failed to pay World Access amounts due World Access from the sale of the calling cards forcing World Access to terminate service to Telecuba. Further, as set forth in the Response to Order to Show Cause, Telecuba continued to sell cards to the public even after being provided with notice of world Access' intent to terminate service (the "Notice"). Further, upon information and belief, Telecuba continued to sell calling cards even after the actual termination of service. World Access cannot be held liable for Telecuba's fraudulent and illegal activities.

The Staff has estimated that 30,000 Telecuba cards were rendered non-working when World Access terminated service. The Staff proposes a direct refund to Telecuba's customers by World Access under the terms of Chapter 364.02, Florida Statutes, and requests that World Access implement a direct refund, plus interest, to the affected customers in accordance with Rule 25-4.114, Florida Administrative Code.

World Access submits that although Telecuba may have been an agent selling for World Access, Telecuba, in violating its agreement with World Access acted as a telecommunications company with respect to the general public and with respect to the Commission's enforcement powers under Florida Statutes § 364.02 which provides, *inter alia*, that "'telecommunications company' includes every corporation, partnership, and person . . . offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility." World Access provided Telecuba space in their facility to conduct operations. Thus, as the seller of the cards in question, Telecuba, not World Access must have responsibility for any such refund. World Access has previously agreed to provide Telecuba with all records necessary for Telecuba to refund money to customers who have purchased debit cards as ordered by the Commission.

Further, there is no mechanism contained in Rule 25-4.114, Florida Administrative Code to provide for refunds in this type of matter. Specifically, the cards sold are "bearer" cards, because the actual debit cards sold and distributed by Telecuba were purchased by a customer at local stores and vendors throughout the state. Consequently, although World Access has documentation which shows the balance remaining on specific cards, there is no other information contained on the cards (or otherwise available to World Access) which can identify any one particular customer. In other words, the holder or possessor of the card (if the holder has a valid Personal Identification Number (PIN)) is the owner of the particular long distance calling card itself merely provides the end user with the necessary information to place the call and utilize World Access' network system. Therefore, the records maintained by World Access do not identify a customer by name and address, so as to permit Telecuba to contact the customer to distribute a refund. In effect, any repayment plan implemented by Telecuba must necessarily involve giving constructive notice to a holder of a debit card, without distinguishing which customer actually made the purchase of the card.

D.—G. World Access' Position on the Issues:

ISSUE 1: Should the Commission require World Access to provide its relevant call detail records in a standard format to Telecuba to facilitate proper customer refunds?

World Access: World Access has already agreed to provide such records as it maintains to Telecuba to facilitate proper customer refunds.

ISSUE 2: Should World Access complete direct refunds to consumers plus interest pursuant to Rule 25-4.114, Florida Administrative Code, for debit cards sold that were unusable?

World Access: Under any circumstances, World Access should not be responsible to refund any monies to any party for sales of prepaid calling cards sold after World Access notified Telecuba that World Access was discontinuing service. In the event that (i) it is determined that the regulations and scope of the Act apply to the sale of prepaid calling cards used to purchase telecommunications services exclusively used to contact persons residing in foreign countries; (ii) it is determined that Telecuba is not primarily responsible for making refunds to Telecuba's customers; and (iii) it is further determined that Telecuba is actually a marketing agent and did not qualify as a telecommunications company as defined in Fla. Stat. § 364.02, World Access should have responsibility to refund only that amount as is necessary to compensate Telecuba's customers for the unused values on their cards, as reflected in the books and records of World Access. A procedure to determine notification to Telecuba's customers should be determined by the Commission, which procedure would be instituted by published notice to the customers and would require the relevant customer to return the card to World Access such refunds would be based on the Telecuba specific rate charge pursuant to Rule 25-4.114(3), Florida Administrative Code.

ISSUE 3: Did World Access knowingly provide interexchange telecommunications service to an uncertificated entity?

World Access: World Access had no knowledge that Telecuba was reselling World Access' service in an unauthorized manner because (i) Telecuba had misrepresented their qualification to World Access; (ii) World Access was under the agreement with Coello, to be a 50% owner of Telecuba; and (iii) Telecuba was not engaging in the reselling or rebilling of inter-exchange telecommunication services in the State of Florida since all incoming and/or outgoing pre-paid debit card customer calls ran through World Access.

ISSUE 4: Should the Commission fine World Access for knowingly providing interexchange telecommunications service to an uncertificated entity?

World Access: World Access believes that, given the circumstances in this matter, and especially the fraudulent and illegal conduct of Telecuba, that World Access should not be fined.

ISSUE 5: Should the Commission cancel World Access' certificate for knowingly providing interexchange telecommunications service to an uncertificated entity?

World Access: World Access agrees with the Staff that this matter does not rise to the level of revoking World Access' certificate.

ISSUE 6: If it is determined that a fine is appropriate, what amount should be levied?

World Access: World Access believes that the maximum fine applicable to this circumstance is \$5,000 and that, given the nature of the circumstances, such a fine would be grossly unfair to World Access.

H. Stipulation.

World Access is not aware of any issues that have been stipulated at this time.

I. Pending Motions:

World Access has no pending motions at this time.

Respectfully submitted this 17TH day of April, 1997.

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By: *Barry P. Gruher*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof was (mailed/delivered) this 17th day of April, 1997, to: **BLANCA S. BAYO**, Director of Division of Records and Reporting and **WILLIAM P. COX, Esquire**, Florida Public Service Commission, Gerald L. Gunter Building, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850.

By: *Barry P. Gruher*
BARRY P. GRUHER

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**NOTICE OF FILING WORLD ACCESS'
PREHEARING STATEMENT**

WORLD ACCESS COMMUNICATIONS CORPORATION, by and through undersigned counsel, hereby gives Notice of Filing its Prehearing Statement.

Respectfully submitted this 18th day of April, 1997.

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BARRY P. GRUHER

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