



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND
REPORTING

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RECEIVED-FPSC

DATE: MAY 6, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (CALDWELL) *CB*
DIVISION OF COMMUNICATIONS (BIEGALSKI) *KB AD*

RE: DOCKET NO. 990497-TI - INITIATION OF SHOW CAUSE PROCEEDING AGAINST COMMUNICATION EXPRESS, INC. D/B/A COMDEX FOR APPARENT VIOLATION OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER SELECTION, RULE 25-4.043, FLORIDA ADMINISTRATIVE CODE, RESPONSE TO COMMISSION STAFF INQUIRIES, AND RULE 25-4.0161, FLORIDA ADMINISTRATIVE CODE, REGULATORY ASSESSMENT FEES

AGENDA: 05/18/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\990497.RCM

CASE BACKGROUND

- April 7, 1998 - Communication Express, Inc. d/b/a CommEx (CommEx) obtained Florida Public Service Interexchange Telecommunications certificate number 5487.
- November 18, 1998 - the Division of Consumer Affairs (CAF) received a complaint regarding the apparent unauthorized change of the customer's long distance service by CommEx. That same day, CAF mailed a letter to the company which was returned by the U.S. Postal Service as undeliverable. CAF remailed the letter to the corrected address.
- December 2, 1998 - The Division of Consumer Affairs received an additional complaint regarding the apparent unauthorized change of the customer's long distance service by CommEx.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

- December 9, 1998 - The company responded to the complaint received on December 2, 1998. Based on the company's response, CAF requested additional information from the company.
- December 30, 1998 - Staff sent certified letters pertaining to both complaints. The letters were signed for and received on January 8, 1999, but to date, staff has not received a response.
- April 15, 1999 - Staff was informed that CommEx has not paid the total amount of regulatory assessment fees due for 1998. The company remitted \$10.47, but still owes \$39.53. To date, staff has not received the outstanding regulatory assessment fees, including statutory penalties and interest.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Communication Express, Inc. d/b/a CommEx to show cause in writing why a fine of \$20,000 for apparent violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees should not be imposed or certificate number 5487 should not be canceled?

RECOMMENDATION: Yes. The Commission should order CommEx to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have certificate number 5487 canceled or be fined \$20,000 for apparent violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries and \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees. The company's response should contain specific allegations of fact or law. If CommEx fails to respond to the show cause, and the fines and fees are not paid within 5 business days after the 21 day show cause period, the delinquent regulatory assessment fees, including statutory penalties and interest, should be forwarded to the Comptroller's Office for collection and certificate number 5487 should be canceled. If the fines are paid, they should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (Biegalski)

DOCKET NO. 990497-FI
DATE: May 6, 1999

STAFF ANALYSIS: Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, states:

(1) The primary interexchange company (PIC) of a customer shall not be changed without the customer's authorization.

CommEx has not provided staff with any information obtained from the customer authorizing the change in service. Therefore, CommEx is in apparent violation of Rule 25-4.118, Florida Administrative Code.

In addition, Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Staff sent certified letters to CommEx on December 31, 1998. The letters were signed for and received on January 8, 1999. To date, no response has been received.

Furthermore, Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts. On April 15, 1999, staff learned that CommEx had not submitted the total amount due for the 1998 regulatory assessment fees, along with statutory penalties and interest charges. Therefore, the company has failed to comply with Rule 25-4.0161, Florida Administrative Code.

Accordingly, staff recommends that the Commission find that CommEx's apparent violations of Rule 25-4.118, Florida Administrative Code, Rule 25-4.043, Florida Administrative Code, and Rule 25-4.0161, Florida Administrative Code, rise to the level warranting that a show cause order be issued. CommEx should be ordered to show cause within 21 days of the order why it should not be penalized pursuant to Section 364.285, Florida Statutes.

DOCKET NO. 990497-II
DATE: May 6, 1999

ISSUE 2: Should this docket be closed?

RECOMMENDATION: This docket should remain open pending resolution of the show cause proceeding. If, however, CommEx fails to respond to the Commission's order to show cause and fails to pay the fines and fees, including statutory penalties and interest, within 5 business days of the Order becoming final, the certificate should be canceled and this docket closed. (Caldwell)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, CommEx will have 21 days from the issuance of the Commission's order to respond in writing why it should not be fined in the amounts proposed. This docket, accordingly, should remain open pending resolution of the show cause proceeding.

If, however, CommEx fails to respond to the Commission's show cause order, and the fines and fees are not received within 5 business days of the Order becoming final, the certificate should be canceled and this docket closed.