

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of METRO COMMUNI-)	DOCKET NO. 880140-TI
CATIONS NETWORK, INC. for transfer of)	
IXC certificate to PROFIT CONCEPT)	ORDER NO. 20736
SYSTEMS OF LAKE COUNTY, d/b/a METRO)	
LONG DISTANCE.)	ISSUED: 2-14-89
)	

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
GERALD L. GUNTER

ORDER OF DISMISSAL FOR FAILURE
TO COMPLY WITH COMMISSION ORDER NO. 20324

BY THE COMMISSION:

Metro Communications Network, Inc. and Profit Concept Systems of Lake County d/b/a Metro Long Distance are hereby notified of dismissal from any further proceedings in the above-referenced docket for failure to comply with Order No. 20324, as provided by Rule 25-22.042, Florida Administrative Code. Additionally, if either company opposes the dismissal, it must file, within fourteen days issuance of this Order, a motion requesting that the dismissal be set aside and stating the ground relied upon.

BACKGROUND AND DISCUSSION

Order No. 19645, issued on July 11, 1988, proposed to grant the transfer of Certificate of Public Convenience and Necessity No. 899 from Metro Communications Network, Inc. (Metro) to Profit Concept Systems of Lake County d/b/a Metro Long Distance (PCS of Lake County). However, before the Proposed Agency Action was final a protest to Order No. 19645 was filed by United Telephone Company of Florida (United). The protest stayed the issuance of the consummating order that would have finalized the transfer of Certificate No. 899.

United's timely protest demonstrated that its substantial interest would be affected by our approval of the transfer by alleging that both the proposed transferor and the proposed transferee owed United substantial sums of money without either company having shown any evidence of ability or intent of satisfying their financial obligations. Additionally, United raised disputed issues of material fact sufficient to entitle it to a hearing pursuant to Section 120.57(1), Florida Statutes. Accordingly, the matter was set for hearing.

On November 10, 1988, a meeting was held for the purpose of identifying the issues to be addressed as a result of United's protest to our proposed agency action. Although written notice was sent to both Metro and PCS of Lake County neither company appeared at the meeting.

Order on Prehearing Procedure No. 20324, issued on November 17, 1988, set forth the procedures to be followed prior to hearing. Among other things, the Order directed the parties to file prehearing statements on or before December 22, 1988, and

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established January 10, 1989, as the date for the Prehearing Conference. The order stated that failure to file a prehearing statement would constitute waiver of issues not raised by any other party or by Commission staff and would preclude the party from presenting testimony in favor of his position on such omitted issues. Additionally, the order explained that failure to attend the prehearing conference would constitute waiver on all issues that were raised in a party's prehearing statement.

Neither Metro or PCS of Lake County filed a prehearing statement, attended the prehearing conference or contacted any one at the Commission to notify us of an inability to comply with Order No. 20324. A telephone call placed by our staff to Metro on January 9, 1989, was not returned.

Therefore, because of the failure of either Metro or PCS of Lake County to comply with Order No. 20324 we hereby notify them of their dismissal from further proceedings in this docket, pursuant to Rule 25-22.042, Florida Administrative Code. Rule 25-22.042 provides that the parties shall receive notice of dismissal and shall be given not more than fourteen days after service of notice, which in this case shall be the issuance of this Order, to file a motion requesting that the dismissal be set aside and stating the ground relied upon. Failure to respond within the timeframe shall constitute waiver as to the issue of dismissal and will result in further action to rescind our approval of the transfer as proposed by our action in Order No. 19645.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Metro Communications Network, Inc. and Profit Concept Systems of Lake County, d/b/a Metro Long Distance are hereby notified of dismissal from any further proceedings in this docket for failure to comply with Order No. 20324, as set forth in the body of this Order. It is further

ORDERED that any motion requesting that the dismissal be set aside must be filed within fourteen days of this order and must state the grounds relied upon. It is further

ORDERED that failure to respond within the form, and the prescribed time shall constitute waiver of the parties right to oppose dismissal. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission,
this 14th day of FEBRUARY, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DWS

by: Kay Flynn
Chief, Bureau of Records

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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 adversely affected by the action proposed by this order may file a petition for a formal proceeding pursuant to Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on February 28, 1989. Failure to respond by February 28, 1989, 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 March 1, 1989.

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 an electric, gas or telephone utility or by 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 of the default set forth in 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.