

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Telecom Xpress, Inc. for Authority to Provide Inter-exchange Telecommunications Service.)	DOCKET NO. 880828-TI
)	ORDER NO. 20864
)	ISSUED: 3-8-89

ORDER ON PREHEARING PROCEDURE

Pursuant to the provisions of Rule 25-22.038, Florida Administrative Code, all parties and Staff are hereby required to file with the Director of Records and Reporting a prehearing statement on or before March 13, 1989. Each prehearing statement shall set forth the following:

- (a) all known witnesses that may be called and the subject matter of their testimony;
- (b) all known exhibits, their contents, and whether they may be identified on a composite basis and witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue;
- (f) a statement of each policy question the party considers at issue and which of the party's witnesses will address the issue;
- (g) a statement of the party's position on each issue identified pursuant to paragraphs (d), (e) and (f) and the appropriate witness;
- (h) a statement of issues that have been stipulated to by the parties;
- (i) a statement of all pending motions or other matters the party seeks action upon; and
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

The original and fifteen copies of each prehearing statement must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 13, 1989. Failure of a party to timely file a prehearing statement shall be a waiver of any issues not raised by other parties or by the Commission Staff. In addition, such failure shall preclude the party from presenting testimony in favor of his or her position on such omitted issues. Copies of prehearing statements shall also be served on all parties. Prehearing statements shall substantially conform to the Florida Rules of Civil Procedure requirements as to form, signatures, and certifications.

ORDER NO. 20864
DOCKET NO. 880828-TI
PAGE 2

Each party is required to prefile all exhibits and all direct testimony it intends to sponsor in written form. Prefiled testimony shall be typed on standard 8 1/2 x 11 inch transcript quality paper, double spaced, with 25 numbered lines, in question and answer format, with a sufficient left margin to allow for binding. An original and fifteen copies of each witness' prefiled testimony and each exhibit must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the due date. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony. Copies of all prefiled testimony shall also be served by the sponsoring party on all other parties.

A final prehearing conference will be held on March 29, 1989, in Tallahassee. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, will be met in this case and the following shall apply:

Any party who fails to attend the final prehearing conference, unless excused by the prehearing officer, will have waived all issues and positions raised in his or her prehearing statement.

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: he or she was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issues; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, he or she shall bring that fact to the attention of the prehearing officer. If the prehearing officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify his or her position in a post-hearing statement of issues. In the absence of such a finding by the prehearing officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in his or her post-hearing statement.

ORDER NO. 20864
 DOCKET NO. 880828-TI
 PAGE 3

To facilitate the management of documents in this docket, parties and Commission Staff shall submit an exhibit list with their respective prehearing statements. Exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the Exhibit Number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 870675-TL
 J. Doe Exhibit No. _____
 Cost Studies for Minutes
 of Use by Time of Day

The following dates have been established to govern the key activities of this proceeding in order to maintain an orderly procedure.

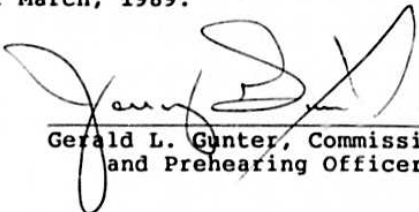
1. March 13, 1989 - All Direct Testimony to be filed
2. March 27, 1989 - Rebuttal Testimony to be filed
3. March 13, 1989 - Prehearing Statements to be filed
4. March 29, 1989 - Prehearing Conference
5. April 14, 1989 - Hearings to be held.

Attached to this order as Appendix "A" is a tentative list of the issues which will be addressed in this proceeding. Prefiled testimony and prehearing statements shall be addressed to the issues set forth in Appendix "A".

Discovery

When interrogatories or requests for production are served on a party and the respondent intends to object to or ask for clarification of an interrogatory or request for production, the objection or request for clarification shall be made within ten (10) days of service of the interrogatory or request for production. This procedure is intended to reduce delay time in discovery.

By ORDER of Gerald L. Gunter, Commissioner and Prehearing Officer, this 8th day of March, 1989.



 Gerald L. Gunter, Commissioner
 and Prehearing Officer

(S E A L)

ELJ

ORDER NO. 20864
DOCKET NO. 880828-TI
PAGE 4

APPENDIX "A"

LIST OF ISSUES

1. Is Telecom Xpress a "telephone company" as defined in Section 364.02, Florida Statutes? (Legal)
2. Do Telecom Xpress' business procedures constitute a "multi-level distribution scheme" or a "pyramid sales scheme" as defined in Rule 2-17.001, Florida Administrative Code? Is this activity therefore unfair or deceptive as provided in Rule 2-17.003? (Legal)
3. Do the transactions between Telecom Xpress and Telecom Xpress Representatives constitute "business opportunities" as defined in Section 559.801, Florida Statutes? (Legal)
4. If Issue 3 is answered in the affirmative, did Telecom Xpress comply with all the applicable provisions of Sections 559.803-811, F.S., before offering such opportunities?
5. Did Telecom Xpress operate as a telephone company in Florida without a certificate? If so, should Telecom Xpress be fined ten thousand dollars (\$10,000) for failure to comply with Rule 25-24.470, Florida Administrative Code?
6. Is it in the public interest to grant a certificate of public convenience and necessity to Telecom Xpress to operate as an interexchange telephone company in Florida?