

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of METRO)	DOCKET NO. 880140-TI
COMMUNICATIONS NETWORK, INC. for)	
transfer of IXC certificate to)	ORDER NO. 21420
PROFIT CONCEPT SYSTEMS OF LAKE COUNTY)	
d/b/a METRO LONG DISTANCE)	ISSUED: 6-20-89

The following Commissioners participated in the disposition of this matter:

- MICHAEL McK. WILSON, Chairman
- THOMAS M. BEARD
- BETTY EASLEY
- GERALD L. GUNTER
- JOHN T. HERNDON

ORDER INITIATING SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

CASE BACKGROUND

By Order No. 19645, issued July 11, 1988, we 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). 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, 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 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.

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Neither Metro nor PCS 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.

By Order No. 20736, issued February 14, 1989, we notified both Metro and PCS of their dismissal from this proceeding due to their failure to comply with the terms of Order No. 20324. Neither company has filed any response to Order No. 20736. Therefore, pursuant to Rule 25-22.042, Florida Administrative Code, the entire proceeding was dismissed because the parties carrying the burden of proof had been dismissed. As a result, the proposed transfer of Certificate No. 899 from Metro to PCS was never finalized and Metro remains the certificate holder.

DISCUSSION

Rule 25-24.473, Florida Administrative Code, requires all applicants for the sale, assignment or transfer of an interexchange (IXC) certificate to provide this Commission with the information we need to make our determination of whether it is in the public interest to approve the sale, assignment or transfer of the certificate. This burden is a joint one carried by both the transferor and the transferee. The thrust of United's protest was the allegation by United that the proposed transfer from Metro to PCS was not in the public interest. Metro has, in effect, admitted this allegation through its failure to participate in the formal proceeding.

Rule 25-24.480 requires all IXC's to inform this Commission within ten (10) days of any changes in its address, telephone number, or Commission liaison, among other things. Metro's failure to contact us at all once the proposed certificate transfer was challenged can only lead us to believe that either Metro has not provided us with current location information or Metro simply chooses to ignore Commission contacts.

Pursuant to Rule 25-24.474, Florida Administrative Code, we find it appropriate to require Metro to show cause why its IXC Certificate No. 899 should not be cancelled. If Metro fails to respond to this Order within the time-frame set out below, its IXC certificate will be cancelled without further notice.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Metro Communications Network, Inc. shall show cause, in writing, why its interexchange Certificate No. 899 should not be cancelled. It is further

ORDERED that the utility's written response to this Show Cause Order must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0850, by the close of business on July 11, 1989. It is further

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ORDERED that any response filed by the utility must contain specific statements of law and fact. It is further

ORDERED that upon receipt of a response as outlined above, and upon the company's specific request, further proceedings may be scheduled by the Commission, at which time the company would have an opportunity to contest the violations alleged herein. It is further

ORDERED that the utility's failure to file a written response within the prescribed time-frame will constitute an admission of the violations alleged and a waiver of any right to a hearing. It is further

ORDERED that if no timely response to this Order is filed by the utility, its certificate is hereby revoked as set forth in the body of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission,
this 20th day of JUNE, 1989.


STEVE TRIBBLE, Director
Division of Records and Reporting

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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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. 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 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida

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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 July 11, 1989. In the absence of such a petition, this order shall become effective July 12, 1989 as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on July 12, 1989, any party adversely affected 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 effective date of 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.