

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of TELECOM XPRESS, )	DOCKET NO. 880828-TI
INC. for authority to provide inter- )	
exchange telecommunication service. )	ORDER NO. 22863
_____ )	ISSUED: 4-26-90

The following Commissioners participated in the disposition of this matter:

GERALD L. GUNTER  
JOHN T. HERNDON

ORDER RESOLVING SHOW CAUSE

BY THE COMMISSION:

In January, 1988, upon reason and belief that Telecom Xpress, Inc. (TXI) was operating in Florida as a telephone company without valid authority, Commission Staff contacted TXI officials and informed them of the certification requirement in Chapter 364, Florida Statutes. On February 19, 1988, TXI filed an application for authority to operate as an interexchange telecommunications company (IXC). The application, as filed, was incomplete and additional information was requested by Commission Staff. Staff also requested further information on TXI business practices regarding its marketing program which involved a multi-level sales scheme.

An amended application, filed on July 27, 1988, was incomplete and additional information was requested. However, this information was not immediately forthcoming. Because of difficulties in obtaining sufficient information on Telecom's operations, Staff recommended that the application be denied and that Telecom be fined for operating without a certificate. Order No. 20225 was issued on October 27, 1988, as a Proposed Agency Action denying the certificate. Order No. 20226 was issued on the same day requiring TXI to show cause why it should not be fined for violation of Rule 25-24.470, Florida Administrative Code.

By letter dated November 15, 1988, TXI filed a protest to the PAA and asked that the letter be taken as an official response to the Show Cause Order. Because the letter was in substantial compliance with Commission rules, the letter was

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accepted for both purposes, and this matter was scheduled for hearing. Prior to the hearing scheduled on TXI's objection to the proposed agency action, the proposed settlement attached hereto was submitted by TXI.

We feel that the proposed settlement should be accepted because the terms thereof address our concerns regarding the type of service proposed by TXI, and are also fair to TXI. The settlement is accepted and the terms thereof are expressly incorporated herein. Acceptance of this settlement is contingent upon TXI's compliance with the terms thereof and with the further conditions provided herein. The unsuspended portion of the payment proposed in the settlement shall be paid within 30 days of the date of issuance of this order.

After having considered TXI's application and Proposal of Settlement, we conclude that TXI appears to meet all applicable requirements and be capable of providing intrastate long distance telephone service. Therefore, we accept the proposed resolution of this issue and grant a Certificate of Public Convenience and Necessity to provide interexchange telephone services to TXI.

To comply with Chapter 25-24.490 (3), FAC, the applicant has stated that they will not collect any deposits or advance payments for more than one month in advance from customers in Florida. The certificate granted to TXI will authorize it to operate as a telephone company providing long distance telecommunications service within the State of Florida. The authority is statewide but is limited to the provision of the services identified in the applicant's application and tariff.

Also, we issued Order Number 16804 which requires interexchange telephone companies not to construct facilities to bypass a local exchange company (LEC) without first demonstrating to the Commission that the LEC cannot offer the needed facilities at a competitive price in a timely manner. Therefore, we order TXI not to bypass LEC facilities without first receiving express authority.

Based on the foregoing, it is hereby

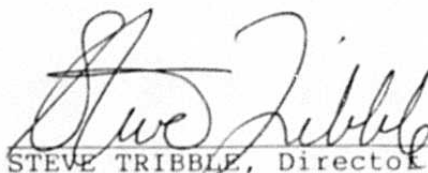
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ORDERED, by the Florida Public Service Commission, that Telecom Xpress, Inc.'s proposal of settlement is hereby accepted according to the terms and subject to the conditions thereof and the conditions provided herein. It is further,

ORDERED that a certificate is hereby granted to Telecom Xpress, Inc., to operate as an interexchange telephone company in Florida. It is further,

ORDERED that this docket be and the same is hereby closed.

By ORDER of the Florida Public Service Commission,  
this 26th day of APRIL, 1990.



STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

JSR

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial

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review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance 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.

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In re: Application of Telecom Xpress, ) DOCKET NO. 880828-TI  
Inc. for Authority to Provide Inter- ) FILED: 3/29/89  
exchange Telecommunications Service )  
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PROPOSAL OF SETTLEMENT

The party of record in the above-styled case, either through its elected officers or its attorneys does hereby propose to resolve the disputed issues in the above-styled case as follows:

A. Reasonable reporting requirements be imposed upon Telecom Xpress, Inc. (Telecom or TXI) as a condition of certification. Specifically, TXI would make quarterly reports to the Commission for a period of 12 months. These reports would contain the following information:

- i. Number of Florida intrastate customers.
- ii. Type of service offered to Florida customers.  
\*\* NOTE - TXI only offers Feature Group D type service.
- iii. Affirmation that underlying IXC's are being paid on a current basis.
- iv. Notification of Florida service interruptions, if any.
- v. List of IXC's being utilized in Florida.
- vi. Report of any service degradation. In its proposed tariff, TXI has stated that a customer can expect a 90% completion rate during peak usage periods. While this level of service is dependent upon the IXC, TXI can monitor it's IXC performance for reporting purposes.

ISSUE 1: Is Telecom Xpress a "telephone company" as defined in Section 364.02, Florida Statutes? (Legal)

PROPOSAL: TXI is a telephone company within the meaning of the statute.

ISSUE 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)

PROPOSAL: Telecom Xpress' business procedures do not appear to constitute a "multi-level distribution scheme" or a "pyramid sales scheme" as defined in Rule 2-17-001, Florida Administrative Code, or "business opportunities" as defined in Section 559.801, Florida Statutes. This TXI marketing program is described in Appendix A hereto. A final determination would reside with the Florida Attorney General's Office and Department of Agriculture and Consumer Services respectively.

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ATTACHMENT

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However, the Commission's public interest standards are met if TXI is allowed to operate as an IXC, subject to conditions specified herein.

- TXI abides by all applicable rules and regulations of this Commission.
- TXI marketing representatives are not required to make investments in TXI.
- The only requirement to become a TXI representative is the completion of an application.
- A marketing representative is not required to subscribe to TXI's long distance telephone service.
- A subscriber to TXI's long distance telephone service is not required to become a marketing agent.
- TXI representatives earn nothing for the act of recruiting individuals who sign up for long distance service or who recruit others.
- Representatives only earn commissions based on collections on telephone bills of subscribers to TXI's long distance service.
- TXI representatives may elect to purchase sales materials from TXI at TXI cost, which is nominal. No commissions are paid on these purchases.

ISSUE 3: Do the transactions between Telecom Xpress and Telecom Xpress Representatives constitute "business opportunities" as defined in Section 559.801, Florida Statutes? (Legal)

PROPOSAL: Same as in Issue 2 above.

ISSUE 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?

PROPOSAL: Not applicable based upon response to Issue 3 above.

ISSUE 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?

PROPOSAL: Though TXI did operate without authority, its conduct in toto, has clearly demonstrated its intent and desire to fully comply with Commission rules and guidelines. Therefore, the public interest is served if the fine imposed is \$5,000.00, with one-half suspended after twelve months pending compliance with all conditions stated herein. This amount, while mitigated to show TXI's efforts to resolve these matters, also reflects the seriousness of any noncompliance with Commission rules.

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ISSUE 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?

PROPOSAL: Yes. However, in order to maintain TXI's business posture, the certificate should issue subject only to the conditions stated herein. The fine would be imposed in resolving the show cause proceeding.

All parties reserve their positions and legal rights on all matters not stipulated to above. This stipulation is entered into in a spirit of compromise and in an effort to obviate the additional expense of further litigation.

Should the Commission refuse to accept this Stipulation in its entirety, the Stipulation shall be void, the hearings previously scheduled for April 14, 1989, shall be rescheduled and all parties will be free to pursue the full range of legal remedies which otherwise would be available to them.

Dated this 29th day of March 1989.

AGREED TO BY:

Telecom Xpress

BY: *Paul Dawson*  
ITS PRESIDENT

BY: *John R. [Signature]*  
ITS ATTORNEY