

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for authority to) DOCKET NO. 900300-TI
 provide interexchange telecommunications) ORDER NO. 23499
 service by PHOENIX NETWORK, INC.) ISSUED: 9-17-90
 _____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER AND INITIATING SHOW CAUSE
PROCEEDINGS FOR VIOLATION OF RULE 25-24.470,
FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

In response to a consumer inquiry, an investigation was instigated into the operations of Phoenix Network, Inc. (Phoenix). The nature of the inquiry led our Staff to suspect that Phoenix was operating as a reseller of long-distance. In response to Staff inquiry, Phoenix requested an IX application. Phoenix's application was filed April 20, 1990.

Rule 25-24.470, Florida Administrative Code (FAC), provides in pertinent part:

- (1) No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of the certificate, if granted. ...

Pursuant to Section 364.285, Florida Statutes, we find it appropriate to require Phoenix to show cause in writing why it should not be fined \$5,000 for violation of Commission Rule 25-24.470, Florida Administrative Code, for providing intrastate communications without first obtaining a certificate of public convenience and necessity from this Commission.

DOCUMENT NUMBER-DATE

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Any response to this Order to Show Cause shall be filed in conformance with Rules 25-22.036(7)(a) and 25-22.037(1), Florida Administrative Code. Phoenix's response, if any, shall contain specific statements as to fact and law. If Phoenix declines to respond, payment of the \$5,000 fine shall be mailed to:

Director of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850.

Therefore, based on the foregoing, it is

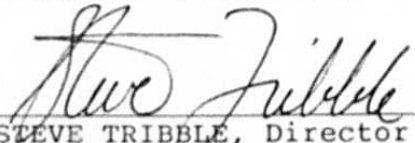
ORDERED by the Florida Public Service Commission that Phoenix Network, Inc. shall show cause in writing why a penalty of \$5,000 should not be assessed against the utility for its failure to comply with Rule 25-24.470, Florida Administrative Code, or, in the alternative, the utility shall pay the fine pursuant to the terms set forth herein. It is further

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

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

ORDERED that the utility's failure to file a written response within the prescribed time period will constitute an admission of noncompliance and a waiver of any right to a hearing.

By ORDER of the Florida Public Service Commission,
this 17th day of SEPTEMBER, 1990.



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.

This order is preliminary, procedural or intermediate in nature. 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 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), 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 October 8, 1990.

Failure to respond within the time set forth above 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 the day subsequent to the above date.

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 any 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.