

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)	DOCKET NO. 900899-TI
proceedings against SELECTEL)	
CORPORATION for violation of Rule)	ORDER NO. 24154
25-24.470, Certificate of Public)	
Convenience and Necessity required)	ISSUED: 2/25/91
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 BETTY EASLEY
 FRANK S. MESSERSMITH
 MICHAEL MCK. WILSON

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Rule 25-24.470, Florida Administrative Code, 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. . . .

Our staff learned of Selectel Corporation's (Selectel or the Company) long distance telephone service sales through a customer complaint. On September 12, 1990, we requested that Selectel explain the circumstances surrounding the complaint, and why it was providing telephone service without the required Interexchange Carrier (IXC) certificate. We also sent the Company an IXC application at that time.

Although Selectel resolved the customer complaint, the Company believes that it is not operating as an IXC. We disagree. Section 364.02, Florida Statutes, provides that a "[t]elecommunications company includes every corporation . . . offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility." Selectel operates as a Multi-Location Plan Aggregator (MLPA). The MLPAs obtain volume discounts from the largest carriers through negotiated contracts, pursuant to interstate tariffs on file with the FCC. MLPAs offer the resold service by enrolling unaffiliated customers, both business and residential. The customer may even remain with its

DOCUMENT NUMBER-DATE

01846 FEB 25 1991

FPSC-RECORDS/REPORTING

ORDER NO. 24154
DOCKET NO. 900899-TI
PAGE 2

existing carrier, but at a discounted rate. The customer may receive all billing from the MLPA, or billing may continue from the primary IXC, with the MLPA submitting a separate bill for a share of the customer's savings from the discounted rate. Selectel customers are billed by the primary IXC. The Company believes that it is not a telephone company because, once the contract with Selectel is signed, the end user becomes an AT&T subscriber, billed by AT&T, at AT&T rates.

However, Selectel charges end-users a one-time processing fee. We regard this as a charge to obtain discounted telephone service. Also, Selectel's Enrollment Agreement provides for its customers to receive a rebated portion of each month's AT&T billing to the customers. We believe that Selectel's use of a discount rebate schedule allows it to keep a portion of the AT&T discount, thus constituting indirect payment to Selectel from the customers. Further, AT&T considers the end user subscribers to be joint customers of AT&T and Selectel.

Pursuant to Section 364.285, Florida Statutes, we find it appropriate to require Selectel to show cause in writing why it should not be fined \$3000 for violation of Commission Rule 25-24.470, for reselling long distance telephone service without first obtaining a certificate of public convenience and necessity from this Commission.

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). Selectel's response, if any, shall contain specific statements as to fact and law. If Selectel declines to respond, payment of the \$3000 fine shall, within 30 days of the issuance of this Order, be mailed to:

Director, Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0870

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Selectel Corporation shall show cause, in writing, why a penalty of \$3000 should not be assessed against the utility for its failure to comply with Rule 25-24.470, Florida Administrative Code, or, in the

ORDER NO. 24154
DOCKET NO. 900899-TI
PAGE 3

alternative, the utility shall pay the fine pursuant to the terms set forth herein. It is further

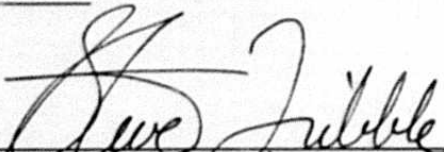
ORDERED that any response filed by the utility must contain specific statements of law and fact. It is further

ORDERED that upon receipt 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 herein. 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. It is further

ORDERED that this docket remain open pending resolution of this proceeding.

By ORDER of the Florida Public Service Commission, this 25th
day of FEBRUARY, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

PAK

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

ORDER NO. 24154
DOCKET NO. 900899-TI
PAGE 4

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 March 18, 1991.

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.