

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause	)	DOCKET NO. 910875-TC
proceedings against EQUAL ACCESS	)	
CORPORATION for violation of the	)	ORDER NO. 25212
interLATA rate cap and Rule 25-4.043,	)	
F.A.C., Response Requirement.	)	ISSUED: 10/14/91
	)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 SUSAN F. CLARK  
 J. TERRY DEASON  
 BETTY EASLEY  
 MICHAEL McK. WILSON

ORDER TO SHOW CAUSE WHY  
A FINE SHOULD NOT BE IMPOSED

BY THE COMMISSION:

Equal Access Corporation (Equal Access or the Company) has been a certificated pay telephone service (PATS) provider since February 28, 1990. As a certificated PATS provider Equal Access is subject to our jurisdiction.

On January 17, 1989, we issued Order No. 20610 which set forth the appropriate rates to be charged by non-local exchange companies (NLEC) PATS providers for 0+ and 0- interLATA calls. Those rates were capped at AT&T DDD daytime rate plus applicable operator/calling card charges plus up to \$1.00 surcharge. However, in confinement facilities, such as mental hospitals and correctional facilities, we capped 0+ and 0- interLATA calls at the AT&T time-of-day rates, plus applicable operator card charges, with no surcharge because of the inmates' inability to access more than one interexchange carrier.

Equal Access filed a petition for waiver of Rules 25-24.515(3), (4), and (6), Florida Administrative Code, on June 21, 1990. However, the petition was deferred until after the proceedings in Docket No. 860723-TP. In Order No. 25016, we granted Equal Access' petition. A portion of the Order addressed interLATA rate caps from confinement facilities and consistent with previous waiver requests and Order No. 24101. We reduced the interLATA rate cap to AT&T time-of-day rates, plus operator charges.

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On May 16, 1991, a complaint was filed against Equal Access for billing in excess of the aforementioned limits and for the billing of calls not accepted by the customer. The calls in question were from a correctional facility and were all operator-assisted. Our staff requested a response to this complaint, but Equal Access has not responded within 15 days as required by Rule 25-4.043, Florida Administrative Code. Also on August 9, 1991, a second complaint was filed against Equal Access for overbillings and billing of calls that were not accepted. These calls originated from the same correctional facility. Our staff has evaluated the bills supplied by the customers, and it does appear that Equal Access has billed in excess of the rate caps in question.

The calls that were not accepted were apparently received by an answering machine. Equal Access is providing its own operator service for interLATA calls via store and forward technology. Completion of calls to an answering machine is one of the disadvantages of store and forward technology, which was addressed in Docket No. 860723-TP. Order No. 22349 issued December 28, 1989 set forth guidelines regarding private payphones and billing and collection services. The order states:

...three fundamental requirements with which private payphone providers must adhere in order to receive billing and collection service: (1) private payphone providers will be required to bill calls through a clearinghouse (i.e., the clearinghouse can bill the calls, but the private payphone provider cannot get billing directly through the LEC); (2) private payphone providers can bill only interLATA calls; and (3) a time-out sequence to initiate billing for a collect call is prohibited.

The time-out sequence works when the calling party is placing a call from a payphone that utilizes store and forward technology, also referred to as "operator in a box." The called party is instructed to dial a digit, such as a "1" to accept a collect call or hang up to deny acceptance. If the called party fails to respond one way or the other within five seconds the call is placed and the called party is billed. Order No. 22349 further states:

We are concerned with the time-out sequence aspect of privately-owned payphones because this may generate customer complaints over billing...For example, calls

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terminating on a line which has an answering machine or a data set may have the call billed without the customer's knowledge or consent...We do not find this time-out feature to be in the public interest (emphasis added) and, therefore, we approve Southern Bell's modification to its filing prohibiting it.

Equal access appears to be using technology that is prohibited. This technology allows a customer to be billed for a collect call without the customer actively indicating a willingness to accept the call.

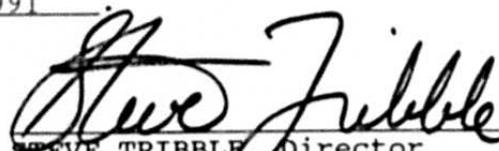
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Equal Access Corporation be required to show cause why its Certificate No. 2433 should not be canceled for the violations outlined in the body of this Order or, in the alternative, why it should not be fined for these violations. It is further

ORDERED that any response to this Order shall be filed pursuant to the requirements set forth below. It is further

ORDERED that this docket remain open pending resolution of the show cause process.

By ORDER of the Florida Public Service Commission, this 14th day of OCTOBER, 1991.

  
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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 11/14/91.

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.