

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 930396-TI
certificate to provide) ORDER NO. PSC-94-0113-FOF-TI
interexchange telecommunications) ISSUED: January 31, 1994
service by ATLAS COMMUNICATION)
CONSULTANTS, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

ORDER TO SHOW CAUSE

BY THE COMMISSION:

I. BACKGROUND

On April 16, 1993, Atlas Communication Consultants, Inc. (Atlas) filed an application to provide interexchange communications service. By Order No. PSC-93-1066-FOF-TI, issued July 21, 1993, the Commission issued a proposed agency action (PAA) proposing to grant a certificate to Atlas. On August 10, 1993, Best Telephone Company, Inc. (Best) filed a Petition on Proposed Agency Action protesting the grant of the certificate to Atlas. Atlas filed its answer to the petition on September 7, 1993. On October 14, 1993, Atlas filed a Motion for Summary Final Order. Best filed a Memorandum in Opposition to Motion for Summary Final Order on October 21, 1993.

This Order is directed to certain of the allegations raised in Best's petition as well as certain information we have received since the issuance of the PAA. The Motion for Summary Final Order will be addressed by separate Order.

II. SHOW CAUSE

Atlas submitted affidavits attached to its Motion to support its contention that it did not falsify its application and that it was not providing service at the time its application was filed.

DOCUMENT NUMBER-DATE

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However, the affidavits do indicate that Atlas was providing service prior to the Commission approving its application for certification as an interexchange carrier. The affidavits contain customer bills which suggest that service was being provided prior to certification regardless of whether Atlas service was being provided at the time the application was filed.

Section 364.33, Florida Statutes, provides, in part:

A person may not begin the construction or operation of any telecommunications facility, or any extension thereof for the purpose of providing telecommunications services to the public, or acquire ownership or control thereof, in whatever manner, including the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership, without prior approval.

In addition, Rule 25-24.470 provides:

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 service be collected, until the effective date of the certificate.

Based on the affidavits, it appears that Atlas provided service prior the Commission granting a certificate. In addition, while Atlas has provided affidavits indicating that service was not provided until after the application was filed, there remains the allegations that Atlas provided service prior to the filing of its application. Accordingly, we find it appropriate to require Atlas to show cause why a fine should not be imposed for providing service in Florida without a certificate violation of Section 364.33, Florida Statutes, and Rule 25-24.470, Florida Administrative Code.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Atlas Communication Consultants, Inc. be required to show cause in writing why a fine should not be imposed for providing service in Florida without a certificate in violation of Section 364.33, Florida Statutes, and Rule 25-24.470, Florida Administrative Code, as set forth in the body of this Order. It is further


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ORDERED that Atlas's response to this Order, if any, shall be filed within 20 days of the date of issuance of this Order. It is further

ORDERED that Atlas's response shall contain specific allegations of fact and law. It is further

ORDERED that, should Atlas fail to file a timely response to this Order, such failure shall constitute an admission of the violations alleged herein, and a waiver of any right to a hearing.

By ORDER of the Florida Public Service Commission, this 31st day of January, 1994.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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 February 21, 1994.

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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 wastewater 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.