

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 910875-TC
proceedings against EQUAL ACCESS) ORDER NO. PSC-94-1248-FOF-TC
CORPORATION for violation of the) ISSUED: October 11, 1994
InterLATA rate cap and Rule 25-)
4.043, F.A.C., Response)
Requirement.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER CANCELLING CERTIFICATE AND IMPOSING FINE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

Equal Access Corporation (Equal Access) has been a certificated pay telephone service provider since March 1, 1990 and is subject to our jurisdiction pursuant to Chapter 364, Florida Statutes.

On May 13, 1991, by Order No. 24495 we required Equal Access to show cause why it should not pay a \$250 fine for failure to file a 1990 annual report and for failure to respond to our staff inquiries. That docket was closed after Equal Access filed the report and paid the fine.

In May, 1991, we forwarded a customer complaint to Equal Access and requested a response. The customer had been overcharged for collect calls placed from a correctional facility and had also

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been billed for collect calls that were not accepted. Equal Access failed to respond to our staff regarding that complaint. As a result of the apparent overcharging and the company's failure to respond to the complaint, this docket was opened.

On October 14, 1991, we issued Order No. 25212 requiring Equal Access to show cause why it should not be fined or have its certificate cancelled for the violations of the interLATA rate caps and of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.

On June 11, 1992, we issued Order No. PSC-92-0494-AS-TC (Order No. 92-0494) approving an offer of settlement. Pursuant to Order No. 92-0494, Equal Access was to "initiate all steps necessary, within its power, to commence credits" to end users for the difference between rates charged and the applicable AT&T time of day rates for the period March 1, 1991 through October 31, 1991. The program was to be completed on or about January 11, 1993.

On January 8, 1993 Equal Access filed a Motion to Amend the Credit Procedure. Although no refund had been made, Equal Access asserted that it had made good faith efforts to meet the terms of Order No. 0494. Equal Access said the mechanism required to make the refunds was unworkable and the cost prohibitive. The company proposed to refund \$200,000.00 (\$65,816.65 more than the actual \$134,183.35 overcharged), by means of a prospective rate reduction to take place over a twelve month period. On May 13, 1993, we issued Order No. PSC-93-0740-AS-TC which approved the amended settlement proposal and ordered Equal Access to make regular reports on the status of the refund program.

II. CURRENT SITUATION

On June 8, 1994, approximately twelve months after the prospective rate reduction should have been completed, we contacted Equal Access to inquire about the status of the refund. Equal Access had not reported on the refund status as required by Order PSC-93-0740-AS-TC. Equal Access replied that in the twelve months since the Order was issued, it had only refunded \$21,659.25 of the \$200,000 total refund. Equal Access said it did not submit regular reports to staff as required because "it was an oversight" and "with the crush of business, the request was overlooked." Equal Access further explained that the total amount had not been refunded during the previous twelve months because "the volume of calls expected was not met."

In this same letter, Equal Access proposed to settle this matter by reducing the charge of its interLATA calls by \$1.75 for the next twelve months. The company further proposed that if the entire \$200,000 refund was not achieved within twelve months by this method, it would refund the balance directly to those end-users overcharged during the following six months.

We reject Equal Access' offer of settlement. The company has a long history of failure to comply with our orders and our staff requests. The proposal Equal Access has put forth would allow it another twelve months to refund the remainder (\$178,340.75) of the \$200,000 it failed to refund over the last year. Equal Access says that it did not complete that refund because the "volume of calls expected was not met." The company did not offer any assurances that future call volumes would allow it to complete the refund in a timely matter. We have no reason to believe that Equal Access will fulfil its obligations under this proposal.

Apparently anticipating this problem, Equal Access' offer explains that if there is any balance remaining on the \$200,000 that has not been refunded after 12 months, "over the following 6 months EAC will refund directly to those end-users allegedly overcharged a total amount equal to the amount overcharged." This is unacceptable. The company has not projected how much it believes it will be able to refund through a prospective rate reduction. Furthermore, one of Equal Access' reasons for requesting modification of the original refund agreement was because of the difficulty of identifying and locating the specific customers who were overbilled. In 1992, Equal Access estimated that "at least 35 percent of the refunds/credits cannot be remitted to the proper persons." It is unrealistic to expect that a significant number of customers who were overbilled in 1991 could be located over 4 years later.

Equal Access presented another Offer to Compromise on the morning of the Agenda Conference at which we considered this matter. We reject that Offer as well. In it, Equal Access proposes to waive all operator service charges and set use fees on all intrastate calls and contribute \$40,000 per year to a public interest fund designated by the Commission. Equal Access estimates the refund process would take two years. This offer is little different from what was previously ordered and we have no confidence in the company's ability to comply.

III. PENALTIES

Based on Equal Access' failure to comply with our previous Orders and finding the most recent settlement offer unacceptable, we cancel Equal Access' certificate. A fine is also appropriate in this case. In Order PSC-92-0494-AS-TC, when we accepted Equal Access' first offer of settlement that, "We are concerned, however, with the possibility of Equal Access wrongfully benefitting from the overbilling. Accordingly, we find it appropriate to retain jurisdiction over any unrefunded monies." The company has benefited from the use of the excess charges it received in violation of the rate cap on interLATA calls for over three years. The most prudent method of disposing of the collected overcharges under the present circumstances is for the company to pay a fine of \$200,000 less any amount previously refunded through the prospective rate reduction.

This docket will be closed following the expiration of the period specified in the Notice of Further Proceedings or Judicial Review section of this Order unless an appropriate petition is filed by one whose substantial interests may or will be affected by this proposed agency action, as provided in Rules 25-22.029 and 25-22.036(7)(a), Florida Administrative Code.

It is, therefore,

ORDERED by the Florida Public Service Commission that Equal Access Corporation's proposal to complete the remaining portion of the prospective rate reduction required by Order No. PSC-93-0740-AS-TC by reducing the rate on interLATA calls by \$1.75 per call for twelve months and refunding the balance directly to the end-users is rejected. It is further

ORDERED that Equal Access Corporation's Offer to Compromise, dated September 20, 1994, is rejected. It is further

ORDERED that Equal Access Corporation's Certificate of Public Convenience and Necessity No. 2433 is cancelled. It is further

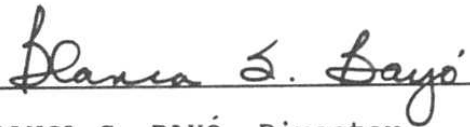
ORDERED that Equal Access Corporation pay a fine in the amount of \$200,000 less any amount refunded through the prospective rate reduction. It is further

ORDERED that, unless a person whose interests are substantially affected by the action proposed herein files a petition in the form and by the date specified in the Notice of

ORDER NO. PSC-94-1248-FOF-TC
DOCKET NO. 910875-TC
PAGE 5

Further Proceedings or Judicial Review, this Order shall become effective and this docket shall be closed on the following date.

By ORDER of the Florida Public Service Commission, this 11th day of October, 1994.



BLANCA S. BAYÓ, 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. 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 25-22.029(4), 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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on November 1, 1994.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it

ORDER NO. PSC-94-1248-FOF-TC
DOCKET NO. 910875-TC
PAGE 6

satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an 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. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.