

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 930396-TI
certificate to provide) ORDER NO. PSC-95-0514-FOF-TI
interexchange telecommunications) ISSUED: April 26, 1995
service by ATLAS COMMUNICATION)
CONSULTANTS, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER RESOLVING SHOW CAUSE PROCEEDING

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.

On April 16, 1993, Atlas Communication Consultants, Inc. (Atlas) filed an application to provide interexchange communications service. By Order Number PSC-93-1066-FOF-TI, issued July 21, 1993, we issued a Notice of Proposed Agency Action 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 granting 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 and on October 21, 1993, Best filed a Memorandum in Opposition to Motion for Summary Final Order.

By Order Number PSC-94-0114-FOF-TI, issued January 31, 1994, we granted the Motion for Summary Final Order filed by Atlas and dismissed, for lack of standing, the protest filed by Best.

However, because of allegations raised in Best's petition as well as certain information received since the issuance of Order Number PSC-93-1066-FOF-TI, we, by Order Number PSC-94-0113-FOF-TI, issued January 31, 1995, ordered Atlas to show cause why it should

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not be fined for providing service in Florida without a certificate in violation of Section 364.33, Florida Statutes, and Rule 25-24.470, Florida Administrative Code.

Section 364.33, Florida Statutes, and Rule 25-24.470, Florida Administrative Code, provide that a company cannot provide interexchange telecommunications services in Florida without first obtaining a Certificate of Public Convenience and Necessity from this Commission. Atlas filed an application for an interexchange certificate on April 16, 1993. According to affidavits submitted by Atlas, it was not providing service at that time. Atlas states it began providing service in May, 1993. The company contends that it did not understand it was not permitted to provide service until the certificate became final. Our staff reviewed discovery submitted by Atlas and inspected records of Atlas and its billing agent, ARN Communications Corp. (ARN). Atlas' invoices and customer lists show that service was commenced in May, 1993, as stated by Atlas. ARN's records confirm the May, 1993 start-up date. We find no evidence to contradict Atlas' contention that it began providing service after the filing of its application.

By Proposed Agency Action Order Number PSC-93-1066-FOF-TI, issued July 21, 1993, we granted a certificate to Atlas. Best filed a timely protest to this Order on August 10, 1993. Atlas' certificate did not become effective until the protest was resolved on January 4, 1994. Therefore, Atlas was in violation of Section 364.33, Florida Statutes, and Rule 25-24.470, Florida Administrative Code, for almost 8 months. Although the 8 month delay is still a violation, we choose not to impose a fine. Much of the delay in certification was caused by Best's protest of the granting of the certificate. Absent Best's protest, Atlas would have been certified in August, 1993. Due to the short period of time Atlas was in violation of the rules and given Atlas' level of cooperation with our investigation, we decline to impose a fine in this case and order that this docket be closed.

It is, therefore

ORDERED by the Florida Public Service Commission that based on the circumstances of this case, no penalty be imposed on Atlas Communication Consultants, Inc. It is further

ORDERED that unless a person whose substantial interests are affected by the action proposed herein files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, below, this Order shall become final and this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 26th
day of April, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

LMB

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 May 17, 1995.

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.

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