

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 910875-TC
proceedings against EQUAL ACCESS) ORDER NO. PSC-95-0970-FOF-TC
CORPORATION for violation of the) ISSUED: August 9, 1995
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
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER ACKNOWLEDGING WITHDRAWAL OF PETITION

BY THE COMMISSION:

Equal Access Corporation (Equal Access) holds Certificate of Public Convenience and Necessity No. 2433 to provide pay telephone service in Florida.

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 staff inquiries. That docket was closed after Equal Access filed the report and paid the fine.

In May, 1991, our staff began investigating a customer complaint that Equal Access was overcharging for collect calls placed from a correctional facility and billing for collect calls that were not accepted. Equal Access did not respond to staff letters. As a result of the apparent overcharging and the company's failure to respond, 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 for failure to respond to staff inquiries in violation of Rule 25-4.043, Florida Administrative Code.

On June 11, 1992, we approved, by Order No. PSC-92-0494-AS-TC, an offer of settlement. Pursuant to the settlement, Equal Access was to "initiate all steps necessary, within its power, to commence credits" to end users for the difference between rates charged and

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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 fulfil the settlement. Equal Access said the mechanism required to make the refunds was unworkable and the cost prohibitive. The company proposed to refund \$200,000 (\$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.

Our staff investigation during the summer and fall of 1994 showed that Equal Access had neither completed the refund nor submitted status reports. On October 11, 1994, we issued Notice of Proposed Agency Action Order No. PSC-94-1248-FOF-TC rejecting two Equal Access settlement proposals, cancelling Equal Access' certificate and imposing a \$200,000 fine. On October 31, 1994, Equal Access filed a Petition on the Proposed Agency Action and requested a formal hearing. The docket was set for hearing on June 30, 1995. On June 22, 1995, Equal Access withdrew its request for a hearing.

A withdrawal of a Petition on Proposed Agency Action allows the Proposed Agency Action order to become final. Our staff explained to the company the significance of this action and both Stephen A. Edwards, the company president, and Steven Rosenthal, the company's attorney, indicated they understood the consequences of withdrawal. Accordingly, we acknowledge Equal Access' withdrawal and declare Order No. PSC-94-1248-FOF-TC final, effective July 18, 1995. Pursuant to that Order, Certificate of Public Convenience and Necessity No. 2433 is hereby cancelled. Equal Access is further ordered to pay a fine of \$200,000.

Order No. PSC-94-1248-FOF-TC rejected two settlement proposals put forth by Equal Access. It cancelled Certificate No. 2433 and ordered Equal Access to pay a \$200,000 fine less any amount previously refunded by the prospective rate reduction agreed to in Order No. PSC-93-0740-AS-TC. Exactly how much money Equal Access refunded would have been an issue at the hearing. At the September 20, 1994 Agenda conference, Equal Access President Stephen A. Edwards told us the amount was \$21,659.25 and that "refunds continue to this day." We cannot be sure Mr. Edwards' figure is correct. Test calls made by our staff indicate that

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Equal Access was overtiming calls and not billing the appropriate amount. Mr. Edwards was not under oath at the Agenda conference and, since Equal Access withdrew its request for a hearing, we could not hear evidence on that issue. We were not able to question Mr. Edwards to determine if Equal Access implemented the refund and how much money, if any, had actually been refunded. Since Equal Access presented no credible evidence to show how much money it refunded, we impose the full \$200,000 fine.

Reasonable efforts shall be made to collect the fine. Reasonable efforts shall be defined as two certified letters demanding payment. If reasonable collection efforts fail, the fine is deemed uncollectible and the matter referred to the Comptroller for further action.

It is therefore,

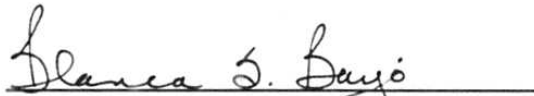
ORDERED by the Florida Public Service Commission that Order No. PSC-94-1248-FOF-TC is final, effective July 18, 1995. It is further

ORDERED that Equal Access Corporation pay a fine of \$200,000. It is further

ORDERED that Certificate of Public Convenience and Necessity No. 2433 is hereby cancelled.

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 9th day of August, 1995.



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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/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 after the issuance 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.