

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 960286-TC
proceedings against Excel Tele-) ORDER NO. PSC-96-1407-FOF-TC
Communications, Inc. d/b/a Excel) ISSUED: November 20, 1996
Tele-Communications, Inc. of)
Georgia for violation of Rule)
25-24.515, F.A.C., Pay Telephone)
Service Requirements.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE PROPOSED AGENCY ACTION
ORDER IMPOSING FINE OR CANCELLING CERTIFICATE

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.

BACKGROUND

Excel Tele-Communications, Inc. of Georgia (Excel) received a certificate (No. 3784) to provide pay telephone service on June 25, 1994. According to the 1995 annual report filed by the company, it operates 39 pay telephones in Florida. Excel earned \$2,240 in intrastate gross revenues according to its regulatory assessment fee filing for the period July 1, 1995 through December 31, 1995.

On May 10, 1996, we issued Order No. PSC-96-0631-FOF-TC, requiring Excel to show cause why it should not be fined and/or have its certificate revoked for violation of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service Standards. On May 30, 1996, Excel filed its response to the Order. In its response, Excel acknowledged the existence and severity of the violations and did not request a hearing.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DECISION

The violations detailed in the Show Cause Order included: improper routing of calls; blocking access to interexchange carriers; failure to post basic information and dialing instructions; and, failure to provide telephone directories. One or more of these violations were present on each of the payphones inspected by us. Excel has not contested these facts.

Mr. Rodney Culpepper, President of Excel filed a response on behalf of the company. The response acknowledges the existence and severity of the violations but states that the violations were unintentional. Mr. Culpepper blames the violations on poor management practices and a destructive partnership that he has since dissolved. The company's response also alludes to someone having tampered with the programming of its payphones. This is an allegation that was also made by Mr. Culpepper in earlier correspondence, however, the claim is unsubstantiated.

Excel completed repairs to the payphones and cooperated with us after receiving notification of the violations. The company's response states that it will abide by our regulations. Excel's response also states that it now strictly monitors access to its programming as a prevention against tampering.

Nevertheless, we find the fact that Excel allowed conditions to exist in which poor management and lack of proper oversight caused multiple violations of the pay telephone service standards to exist is cause for a financial penalty to be imposed. Section 364.285, Florida Statutes, Penalties, states in pertinent part:

(1) The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter which is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$25,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by it.

In previous dockets involving violations of our pay telephone service requirements, penalties ranging from \$500 to \$60,400 have been imposed. Taking into consideration the company's size, we recommend that Excel be ordered to pay a fine in the amount of

ORDER NO. PSC-96-1407-FOF-TC
DOCKET NO. 960286-TC
PAGE 3

\$1,000. If Excel chooses not to pay the \$1,000 fine, we will cancel certificate no. 3784 without further action.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Excel Tele-Communications, Inc. of Georgia shall pay a fine of \$1,000 to the Florida Public Service Commission, with the monies to be forwarded to the Office of the State Treasurer for deposit in the General Revenue Fund, for multiple violations of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service Standards. It is further

ORDERED that Excel will have 30 days from the date the Order becomes final to pay the \$1,000 fine or certificate no. 3784 will be cancelled without further Commission action. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this Docket shall be closed when the fine is received or the certificate cancelled.

By ORDER of the Florida Public Service Commission, this 20th day of November, 1996.

BLANCA S. BAYO, Director
Division of Records and Reporting

by: Kay J. [Signature]
Chief, Bureau of Records

(S E A L)
NSR/MCB

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 11, 1996.

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 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.