

MEMORANDUM

FEBRUARY 23, 1998

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11:00

FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PEÑA) *KPMCB*

RE: DOCKET NO. 980023-TI - REQUEST FOR APPROVAL OF ACQUISITION OF AMERICAN EXPRESS TELECOM, INC. (HOLDER OF IXC CERTIFICATE NO. 4085) BY SMARTALK TELESERVICES, INC. (HOLDER OF IXC CERTIFICATE NO. 4046)

98-0307-FOF-TI

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING ACQUISITION to be issued in the above referenced docket. (Number of pages in order - 4)

KMP/js
Attachment
cc: Division of Communications
I:980023.kmp

2 mailed - 1/1/98

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of acquisition of American Express Telecom, Inc. (holder of IXC Certificate No. 4085) by SmarTalk TeleServices, Inc. (holder of IXC Certificate No. 4046).

DOCKET NO. 980023-TI
ORDER NO. PSC-98-0307-FOF-TI
ISSUED: February 20, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING ACQUISITION

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.

Section 364.33, Florida Statutes, provides that a person may not acquire ownership or control of any telecommunications facility, or any extension thereof for the purpose of providing telecommunications services to the public, including the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership, without prior approval from this Commission.

By letter dated December 30, 1997, SmarTalk TeleServices, Inc. (SmarTalk) and American Express Telecom, Inc. (AETI) filed with this Commission a joint petition for approval of acquisition of AETI by SmarTalk. SmarTalk is the holder of Interexchange Telecommunications (IXC) Certificate No. 4046. AETI is the holder of IXC Certificate No. 4085. The companies have stated that after the transaction is complete, AETI will be requesting the cancellation of its IXC certificate. SmarTalk will amend its

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tariff on file with this Commission to include AETI's prepaid debit card services.

We determine that SmarTalk and AETI have met the requirements of Section 364.33, Florida Statutes. Accordingly, we find that the acquisition is in the public interest, and we approve it pursuant to Section 364.33, Florida Statutes.

Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that the acquisition of American Express Telecom, Inc. by SmarTalk TeleServices, Inc. is hereby approved. 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 in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 20th day of February, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By:

Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

KMP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 March 13, 1998.

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

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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.