

MEMORANDUM

October 28, 1998

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RECORDS AND  
REPORTING

TO: DIVISION OF RECORDS AND REPORTING  
FROM: DIVISION OF LEGAL SERVICES (COX) *WPC mcb*  
RE: DOCKET NO. 980661-TI - REQUEST FOR CANCELLATION OF  
INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 3514 BY  
ACCESS TELECOM, INC., EFFECTIVE 5/14/98.

PSC-98-1470-SC-TI

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER DENYING  
CANCELLATION OF CERTIFICATE AND ORDER TO SHOW CAUSE, to be issued  
in the above-referenced docket. (Number of pages in order - 7)

WPC/anr  
Attachment  
cc: Division of Communications  
I: 980661.ord

*See A/S*

*1 Certified  
10/28/98*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for cancellation  
of Interexchange  
Telecommunications Certificate  
No. 3514 by Access Telecom,  
Inc., effective 5/14/98.

DOCKET NO. 980661-TI  
ORDER NO. PSC-98-1470-SC-TI  
ISSUED: October 28, 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 DENYING CANCELLATION OF CERTIFICATE  
AND ORDER TO SHOW CAUSE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein with regard to Access Telecom, Inc.'s (ATI's) request for voluntary cancellation of its certificate number 3514 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. BACKGROUND

On May 14, 1998, Mr. David Shephard, Vice President of Access Telecom, Inc., (ATI) submitted a request with this Commission seeking a voluntary certificate cancellation. On May 26, 1998, our staff sent a letter to ATI requesting a statement of intent with regard to the following: regulatory fees due; reason for cancellation; how ATI will accommodate its customers; and the procedure used to ensure calling card continuity. To date, our

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REGISTRATION REPORTING

staff has received no written response. On August 3, 1998, our staff again sent a letter requesting that ATI provide the aforementioned statement. Our staff did not receive a response.

On August 10, 1998, our staff learned that on May 6, 1998, ATI was granted voluntary corporate dissolution by the Florida Secretary of State. Further, our staff received notice that ABS Telecom, a marketing firm in California, had to return to customers \$18,967 because of ATI's allegedly dishonored prepaid calling cards. Further, on September 8, 1998, our staff was notified by Global Telecommunication Solutions, Inc., a company in Pennsylvania, that it has incurred nearly \$2,000,000 in liability because ATI has dishonored its prepaid cards.

## II. ATI'S REQUEST FOR VOLUNTARY CANCELLATION

Rule 25-24.474(2)(a), (b), (c) and (d), Florida Administrative Code, Violation of Commission Rule or order states in part:

(2) If a certificated company desires to cancel its certificate it shall provide:

(a) a statement of intent and date to pay regulatory assessment fees

(b) a statement of why the certificate is proposed to be canceled

(c) a statement on treatment of customer deposits and final bills

(d) proof of individual customer notice regarding discontinuance of service

Moreover, Rule 25-24.935, Florida Administrative Code, Discontinuance of Service, states:

A company shall be responsible for ensuring, either through its contract with its network provider, distributors, or marketing agents, or other means, that end user purchased cards remain usable in accord with Rule 25-24.920 (10).

Our staff did not receive the information required by Rule 25-24.474 for a voluntary cancellation, and we believe ATI has sold

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Prepaid Cards that are unusable, an apparent violation of Rule 25-24.935. Accordingly, we hereby deny ATI's request for voluntary cancellation of its certificate.

### III. APPARENT RULE VIOLATIONS

#### Response to Commission Staff Inquiries

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, requires that a reply to staff inquiries be furnished in writing within (15) days of the inquiry. On May 26, 1998, and again on August 3, 1998, our staff sent ATI correspondence asking it to provide the required response in order to grant a voluntary cancellation. It has been over 120 days since the first contact and ATI has not responded.

Accordingly, we hereby order ATI to show cause why it should not be fined \$10,000 for its apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, or have its certificate canceled if the fine is not paid within the time specified by this Order.

#### Discontinuance of Service

It appears that ATI ceased to do business in Florida as of May 6, 1998. We believe that ATI sold multiple Prepaid Calling Cards throughout the United States just days before it ceased doing business. These cards identify ATI as the long distance carrier, and it appears these cards are no longer valid. For instance, ABS Telecom was forced to return monies of \$18,967 for apparently worthless ATI cards. Global Telecommunication Solutions asserts it has incurred \$2,000,000 in liabilities because of ATI's actions. Accordingly, we find ATI's actions to be in apparent violation of Rule 25-24.935, Florida Administrative Code, Discontinuance of Services, as stated above. We hereby order ATI to show cause in writing why it should not be fined \$25,000 for its apparent violation of Rule 25-24.935, Florida Administrative Code.

#### Conclusion

Under Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully

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violated any lawful Commission rule or order, or any provision of Chapter 364, Florida Statutes. Utilities are charged with knowledge of our rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

We believe that ATI's apparent conduct and actions have been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, this Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as ATI's conduct at issue here, would meet the standard for a "willful violation."

ATI shall have 21 days from the issuance of this Order to respond in writing why it should not be fined in the amounts proposed or have its certificate canceled. If ATI timely responds to the show cause order, this docket shall remain open pending resolution of the show cause proceeding. If ATI does not respond to the Show Cause Order, the fines should be deemed assessed. If ATI fails to respond to the Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, ATI's certificate shall be canceled, and this docket closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Access Telecom, Inc.'s request for voluntary cancellation of its certificate number 3514 is denied. It is further

ORDERED that the provisions of this Order regarding Access Telecom, Inc.'s request for voluntary cancellation of its certificate, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, 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

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business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further


ORDERED that Access Telecom, Inc. shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$10,000 or have its certificate canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. It is further

ORDERED that Access Telecom, Inc. shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$25,000 or have its certificate canceled for apparent violation of Rule 25-24.935, Florida Administrative Code, Discontinuance of Services. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, waiver of the right to hearing, and will result in the automatic assessment of the appropriate fines. It is further

ORDERED that in the event that Access Telecom, Inc. fails to respond to this Order and the fines are not received within five business days after the expiration of the show cause response period, Access Telecom, Inc.'s certificate shall be canceled and this docket will be closed administratively.

By ORDER of the Florida Public Service Commission this 28th day of October, 1998.

  
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KAY FLYNN, Chief  
Bureau of Records

( S E A L )

WPC

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.

The show cause portion of this Order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this Show Cause Order may file a response within 21 days of issuance of the Show Cause Order as set forth herein. This response 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 November 18, 1998.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to the show cause portion of this Order within the time prescribed above, that party 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.

As identified in the body of this Order, our action on Access Telecom, Inc.'s request for voluntary cancellation of its certificate is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this Order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the

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close of business on November 18, 1998. If such a petition is filed, 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. In the absence of such a petition, this Order shall become effective on the date subsequent to the above date.

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 the proposed agency action portions of this Order become final and effective on the date described above, any party adversely 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.