

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for authority to) DOCKET NO. 900367-TI
 provide interexchange telecommunications)
 service by FOX COMMUNICATIONS) ORDER NO. 23498
 CORPORATION.)
 _____) ISSUED: 9-17-90

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER INITIATING SHOW CAUSE
PROCEEDINGS FOR VIOLATION OF RULE 25-24.470,
FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

Because of an inquiry on September 8, 1989, an investigation was instigated into the business activities of Phonelink, Inc. (Phonelink). As a result of this investigation it was discovered that Phonelink was operating as an interexchange carrier (IXC) without the required certificate of Public Necessity and Convenience. On September 27, 1989, an application and data request was mailed to Phonelink to be completed and returned. In a letter dated December 5, 1989, Phonelink wrote that they were selling their long-distance customers to Fox Communications Corporation.

On February 19, 1990, another inquiry was received as the result of which, a second application was mailed to Phonelink. The cover letter requested that the application be completed by March 16, 1990. On April 6, 1990, a substantially completed draft was received from the attorney's for Fox. Finally, on May 1, 1990, Fox filed an application for a Certificate of Public Convenience and Necessity to operate as an IXC within the State of Florida.

Rule 25-24.470, Florida Administrative Code (FAC), provides in pertinent part:

DOCUMENT NUMBER-DATE

08261 SEP 17 1990

FPC-RECORDS/REPORTING

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- (1) No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of the certificate, if granted. ...

Based on Staff's investigation, it is apparent that Fox has been functioning as an IXC within Florida since December 4, 1989. Such operations are a violation of Rule 25-24.470, Florida Administrative Code, requiring all providers of interexchange service obtain a Certificate of Public Convenience and Necessity before providing such service. Accordingly, we find it appropriate to require Fox to show cause in writing why it should not be fined \$5,000 for its apparent violation of Rule 25-24.470.

Any response to this Order to Show Cause shall be filed in conformance with Rules 25-22.036(7)(a) and 25-22.037(1), Florida Administrative Code. Fox's response, if any, shall contain specific statements as to fact and law. If Fox declines to respond, payment of the \$5,000 fine shall be mailed to:

Director of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850.

Based on the foregoing, it is

ORDERED that Fox Communications Corporation show cause why it should not be fined \$5,000 for violation of Rule 25-24.470, Florida Administrative Code, for failure to obtain a Certificate of Public Convenience and Necessity prior to providing interexchange telecommunications service in the State of Florida, or in the alternative, return a written request that its certificate be cancelled and the docket closed administratively. It is further

ORDERED that any response filed shall be filed within 20 days of the date of this Order. It is further

ORDERED that upon receipt of a response as outlined above, and upon a Fox's request for a hearing, further proceedings

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will be scheduled by the Commission, at which time the Fox will have an opportunity to contest the violations alleged above. It is further

By ORDER of the Florida Public Service Commission,
this 17th day of SEPTEMBER, 1990.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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.

This order is preliminary, procedural or intermediate in nature. 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 25-22.037(1), 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, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 8, 1990.

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 pursuant to Rule 25-22.037(3), Florida

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Administrative Code, and a default pursuant to Rule 25-22.037(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 this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer 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.