

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause ) DOCKET NO. 900899-TI  
proceedings against SELECTEL ) ORDER NO. PSC-92-0789-FOF-TI  
CORPORATION for violation of Rule ) ISSUED: 08/10/92  
25-24.470, Certificate of Public )  
Convenience and Necessity Required )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

By Order No. 24154, issued February 25, 1991, we ordered SelectTel Corporation (SelectTel or the Company) to show cause in writing why it should not be fined \$3000.00 for reselling long distance telephone service without first obtaining a certificate of public convenience and necessity as required by Rule 25-24.470, Florida Administrative Code. The show cause order was issued against SelectTel for aggregating telecommunications usage of unaffiliated parties to allow the parties to obtain discounts from their primary interexchange carriers (IXCs). The Order required a written response by March 18, 1991; however, SelectTel did not respond to the order. By Order No. 25632, issued January 24, 1992, we imposed the \$3000.00 fine and directed SelectTel to pay the fine within 30 days of the issuance of the order.

On February 14, 1992, SelectTel filed a Notice of Motion and Petition for Reconsideration of Assessment of Fine and Motion and Reply for Reconsideration on Issuance of Application for Certificate to Provide Interexchange Telecommunications Service. The portion of the motion for reconsideration of the application for the IXC certificate shall be addressed in Docket No. 911051-TI. In its Motion for Reconsideration of Assessment of Fine (the Motion) SelectTel alleges that no proper and adequate service of process was ever effectuated on it; therefore, all orders and impositions of fines are invalid and unenforceable. Additionally, SelectTel requests reconsideration by an independent panel because the Company maintains that it does not require an IXC certificate, and the Commission's decision that SelectTel is operating as a phone company is improper and without merit.

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Finally, on May 12, 1992, SelectTel offered to issue certified funds in the amount of \$1500.00 in payment of the fine assessed against it, and as settlement of all matters in this docket. The Company also requested that an IXC certificate be issued.

We disagree with SelectTel's allegation that no proper and adequate service of process was ever effectuated upon it. The original Order to Show Cause, Order No. 24154, explicitly set forth the response requirements. The order also contained the required notice of further proceedings or judicial review, which addressed options available to affected parties. As stated in the order, "the utility's failure to file a written response within the prescribed time period will constitute an admission of noncompliance and a waiver of any right to a hearing." SelectTel had every opportunity to respond to the order, but did not. Additionally, the order imposing the fine, Order No. 25632, also contained all required procedural notice. Therefore, we find that SelectTel's allegation that it did not receive proper and adequate due process is wholly without merit.

Second, SelectTel asks that "a review of the documentation by an independent panel be issued inasmuch as SelectTel maintains that it does not require an application for an interexchange telecommunications services certificate and the position of the Commission claiming that SelectTel is operating as a telephone company without certification (Florida Statute 364.02) is improper and without merit." The notice provided in Final Order 25632 explicitly states all avenues available to an affected party. The party may request reconsideration by the Commission, or may request review by the Florida Supreme Court. Review by an "independent panel" is no longer available because of SelectTel's failure to respond to Order No. 24154, the Order to Show Cause.

Additionally, regardless of SelectTel's activities at the present time, the \$3000 fine was imposed because of those violations the Company committed which were the subject of the original show cause order. By failing to respond to the show cause order, SelectTel admitted the allegations.

SelectTel has proposed a settlement of \$1500.00 in payment of all fines assessed by the Commission. We cannot accept the settlement offer. This Commission imposed the \$3000.00 fine in an appropriate manner, and SelectTel received adequate due process. The Company has not put forth any argument sufficient to warrant

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the Commission setting aside a previous order. Thus, we hereby affirm Order No. 25632, imposing the \$3000.00 fine.

SelectTel shall remit the \$3000.00 fine, within 30 days of the issuance of this Order, to the Director of the Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399. Additionally, we affirm all of the provisions of Order No. 25632. If SelectTel does not remit the fine as directed, then this Commission shall proceed with further action to collect the fine, and to ensure that the Company is no longer operating in Florida. If SelectTel pays the fine as directed, then this docket shall be closed.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that Order No. 25632 is affirmed in all respects. It is further

ORDERED that SelectTel Corporation shall pay a fine in the amount of \$3000.00 within 30 days of the issuance of this Order. It is further

ORDERED that SelectTel Corporation shall discontinue operating as an interexchange carrier in violation of Rule 25-24.470, Florida Administrative Code, or it will be subject to additional fines of up to \$25,000 per day. It is further

ORDERED that if SelectTel Corporation remits the \$3000.00 fine within 30 days of the issuance of this Order, and provides this Commission with an affidavit stating that it is not operating as an interexchange carrier, then this docket shall be closed. Otherwise, this docket shall remain open pending further proceedings.

By ORDER of the Florida Public Service Commission this 10th day of August, 1992.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )  
PAK

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NOTICE OF 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 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 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.