

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Communication Express, Inc. d/b/a CommEx for apparent violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection, Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries, and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees.

DOCKET NO. 990497-TI  
ORDER NO. PSC-99-1198-SC-TI  
ISSUED: June 14, 1999

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE

BY THE COMMISSION:

I. BACKGROUND

On April 7, 1998, the Commission granted Communication Express, Inc. d/b/a CommEx (CommEx or company) certificate number 5487 to provide intrastate interexchange telecommunications service.

On November 18, 1998, we received a complaint from Mr. Arthur Abadie regarding the apparent unauthorized change of the customer's long distance service by CommEx. On December 1, 1998, we received another complaint from Mr. Santiago Abella regarding the apparent unauthorized change of long distance service by CommEx.

On December 9, 1998, the company responded to the customer's complaint of December 2, 1998. On December 10, 1998, we requested CommEx to address why the customer's service was switched and

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requested proof of the customer's authorization. We received no response to that request. On December 30, 1998, certified letters pertaining to both complaints were sent to CommEx. The letters were signed for and received on January 8, 1999, but no response has been received.

In addition, our records show that CommEx has not paid the total amount of regulatory assessment fees (RAFs) due for 1998. The company remitted \$10.47 of the minimum \$50.00 RAFs due; therefore, \$39.53 is due and owing.

## II. APPARENT VIOLATIONS

### a. Interexchange Carrier Selection

As previously stated, this Commission has received two complaints regarding the apparent unauthorized change of the customers' long distance service. These unauthorized carrier change (slamming) infractions are apparent violations of Rule 25-4.118, Florida Administrative Code. This rule requires customer authorization before the customer's long distance service can be changed from one provider to another. A copy of each of the complaints is attached to this Order as "Attachment A".

### b. Failure to Respond to Commission Inquiries

Rule 25-4.043, Florida Administrative Code, provides that "the necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry."

On December 30, 1998, Commission staff sent certified letters pertaining to both complaints. As previously stated, the letters were signed for and received on January 8, 1999, but to date, we received no response. Thus, CommEx has failed to timely respond to inquiries by Commission staff as required by Rule 25-4.043, Florida Administrative Code.

### c. Failure to Pay Statutory Penalties and Interest

Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts. Our investigation shows that although CommEx has paid its regulatory assessment fees for 1995

through 1997, the payments were paid after January 30 for the years 1995, 1996, and 1997, and were, therefore, delinquent. Thus, the company owes accrued statutory penalties and interest for late payments for the three previous years as well as the delinquent balance for 1998. Therefore, we find apparent violations of Rule 25-4.0161, Florida Administrative Code.

### III. CONCLUSION

Pursuant to 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 of a rule, statute, or order continues, if such entity 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 Chapter 364. Utilities are charged with knowledge of our rules and Florida 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).

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, we 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 CommEx's conduct at issue here, would meet the standard for a "willful violation." We find that CommEx's apparent conduct in switching preferred carriers without customer authorization and its failure to timely respond to Commission inquiries concerning customer complaints has been "willful" in the sense intended by Section 364.285, Florida Statutes.

Accordingly, we find it appropriate to order CommEx to show cause in writing within 21 days of the date of this Order why it should not be fined \$20,000 or have its certificate canceled for its apparent violations of Rule 25-4.118, Florida Administrative Code, for failure to obtain customer authorization before changing the customer's long distance service as discussed in Section II.a. of this Order.

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We also find it appropriate to order CommEx to show cause in writing within 21 days of the date of this Order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, or have its certificate canceled for its apparent violation of Rule 25-4.043, Florida Administrative Code, for failure to timely respond to inquiries by Commission staff as discussed in Section II.b. of this Order.

Finally, we find it appropriate to order CommEx to show cause in writing within 21 days of the date of this Order why it should not be fined \$500 or have its certificate canceled for apparent violations of Rule 25-4.0161, Florida Administrative Code, for delinquent payment of regulatory assessment fees as discussed in Section II.c. of this Order.

If CommEx timely responds to this Order, this docket shall remain open pending resolution of the show cause proceeding. If CommEx does not respond to the Commission's Order to Show Cause, the fines shall be deemed assessed. If CommEx fails to respond to this Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, CommEx's certificate Number 5487 shall be canceled and the docket shall be closed.

Any collected fine monies received by the Commission will be forwarded to the Office of the Comptroller for deposit in the state General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Communication Express, Inc. d/b/a CommEx shall show cause in writing within 21 days of the issuance date of the Order why it should not be fined \$20,000 or have its certificate canceled for apparent failure to comply with Rule 25-4.118, Florida Administrative Code. It is further

ORDERED that Communication Express, Inc. d/b/a CommEx shall show cause in writing within 21 days of the date 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. It is further

Ordered that Communication Express, Inc. d/b/a/ CommEx shall show cause in writing within 21 days of the date of this Order why

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it should not be fined \$500 or have its certificate canceled for apparent violations of Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that any response to the Order to Show Cause filed by Communication Express, Inc. d/b/a/ CommEx shall contain specific allegations of fact and law and shall identify the company name and this docket number. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and date set forth in the "Notice of Further Proceedings and Judicial Review" section of this Order shall constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and the fines will be deemed assessed. It is further

ORDERED that in the event Communication Express, Inc. d/b/a CommEx fails to respond to this Order and the fines are not received within five business days from the date this Order becomes final, certificate Number 5487 will be canceled. It is further

ORDERED that all outstanding Regulatory Assessment Fees, penalties, and interest shall remain due and owing. It is further

ORDERED that upon payment of the fine or cancellation of the certificate, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of June, 1999.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

DWC

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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.

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 July 5, 1999.

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 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 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.

Name ABADIE, ARTHUR Company COMDEX (COMMUNICATION EXPRESS, INC.)  
Address 1281 LEATHERWOOD DRIVE Attn. Derrick H. Peters235502I  
City/zip Altamonte Springs 32714 County SEM Consumer's Telephone # (407)-293-3345  
Account Number \_\_\_\_\_ Note \_\_\_\_\_  
Caller's Name ARTHUR ABADIE Informal Conf. \_\_\_\_\_ Outreach REF. BY UTILITY

Request No. 235502I  
By JRD Time 3:15 PM Date 11/18/1998  
To CO Time MAIL Date 12/04/1998  
Type S Form INTERNET  
Category \_\_\_\_\_  
Infraction LS-39  
Closed by JRD Date 01/28/1999  
Reply Received L

Customer states that his PIC was switched from AT&T without his authorization. Customer states: "I am retired from Lucent Technologies. I receive a discount on my AT&T long distance calls. I would not change from AT&T to any other long distance Company."

Please provide proof of authorization and rerate calls.

12/4/98 Inquiry returned by post office as undeliverable. Mailed to corrected address. Due date is now 12/21/98.

12/30/98 Sent certified letter.

1/15/99 Certified receipt received signed 1/8/99.

1/28/99 No response received. Closed with letter. Gave to Jennifer Erdman-Bridges to refer to CMU for handling.

ATTACHMENT A

**CONSUMER REQUEST**

**FLORIDA PUBLIC SERVICE COMMISSION**

2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FL. 32399-0850  
850-413-6100

PLEASE RETURN THIS FORM WITH REPORT OF ACTION TO:

DICK DURBIN

DUE: 12/21/1998

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ATTACHMENT A

2355021

From: INTERACT @ SMTP {Interactive.Slamming.Form@www2.scri.net}  
To: CAFTEST @ PSC, JERDMANB @ PSC, LRASBERRY @ PSC, Pamela Johnson  
Subject: fwd: Slamming Complaint

-----NOTE-----11/18/98--9:28am-----  
Return-Path: <nobody@www2.scri.net>  
Received: from www2.scri.net (207.156.5.16)  
by mail.psc.state.fl.us (Connect2-SMTP 4.30A.1000128);  
Wed, 18 Nov 1998 09:27:29 -0500  
Received: (from nobody@localhost)  
by www2.scri.net (8.8.5/8.8.5) id JAA27098;  
Wed, 18 Nov 1998 09:28:47 -0500 (EST)  
Date: Wed, 18 Nov 1998 09:28:47 -0500 (EST)  
Message-Id: <199811181428.JAA27098@www2.scri.net>  
From: Interactive.Slamming.Form@www2.scri.net  
Subject: Slamming Complaint

recipient:  
CAFTEST@PSC.STATE.FL.US, LRASBERRY@PSC.STATE.FL.US, PJOHNSON@PSC.STATE.FL.US, JERDMANB  
@PSC.STATE.FL.US  
return-email:  
LRASBERRY@PSC.STATE.FL.US, PJOHNSON@PSC.STATE.FL.US, JERDMANB@PSC.STATE.FL.US  
return-name: Consumer Slamming  
Complaint  
subject: Slamming Complaint Form  
Accountholder: Arthur Abadie  
Submitted by: Arthur Abadie  
Service  
Address: 1281 Leatherwood Dr.  
City, State  
and Zip Code: Altamonte Springs, FL 32714  
County: Seminole  
Mailing Address: Same  
Mailing City, State and Zip Code: Same  
E-mail Address: aabadie@us.ibm.com  
Telephone Number at the Service Address: 407-293-3345 -  
Daytime Contact Telephone Number: 407-293-3345  
Local  
Telephone Company: Bell South  
Interstate/Long Distance Telephone  
Company: AT&T  
Intrastate/Local Toll Telephone Company: AT&T  
Interstate/Long Distance: Yes  
Company that Switched the Service Without  
Authorization: Communications Express  
Contacted Preferred Carrier: YES  
Contacted company in dispute: YES  
name of  
contact: OAN Services 1-800-926-7514  
Received bill from new carrier: YES  
comments: The only number to contact is for OAN Services, Inc. (see above).  
I spoke to a service person and she told me that they are only  
responsible for billing. They handle billing for over 500 companies.  
She told me that she would issue a cancellation and it would take  
7 - 10 days. I requested the name and phone number of the long  
distance Company. The dates in question: 09/07/98 - 09/27/98.  
The total charges are \$38.02. She gave me the name, Communications  
Express then she said she could only give me the mailing address.  
I requested to speak to her supervisor, she said O.K. but that they



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ATTACHMENT A

Printed by Dick Durbin 11/18/98 3:11pm

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would tell me the same thing. I was placed on hold for about a minute and she came back on the line and gave me the telephone number: 512-703-5900. I called Bell South and asked them how I could prevent this from happening in the future. I was told that I would need to place a PIC (not sure of the spelling) on my number and that would keep me from getting change without my permission. I am retired from Lucent Technologies. I receive a discount on my AT&T long distance calls. I would not change from AT&T to any other long distance Company.

Fwd-by: Pamela Johnso 11/18/98 3:07pm

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Fwd to: Dick Durbin  
CC: Leroy Rasberry

.....  
Dick, it appears that Carol will be out the rest of week. In her absence, please handle. Thanks!!

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ATTACHMENT A

236703I

November 24, 1998

RECEIVED

NOV 30 10 17 AM '98

The Florida Public Service Commission  
Division of Consumer Affairs  
2540 Shumard Oak Boulevard  
Tallahassee, Fl. 32399-8153

ADMINISTRATION  
MAIL ROOM

Re: *Unauthorized change of long distance carrier from AT&T to WorldCom*  
*Santiago Abella - telephone (813)223-1124*

Gentlemen:

*I have been dealing with this problem since September. My GTE bill came with a change of long distance provider from AT&T to WorldCom. When I called GTE on October, they reverse the \$4.14 charge and send me a form to fill out in order to prevent these unauthorized changes to happen again. I filled out the form and send it back stating GTE local phone and AT&T my long distance carrier.*

*This month, (November), I got two \$4.14 charges to reverse carriers) I called GTE and they gave me credit for both charges...I hope this is the end of it.*

*But - also my bill (November) is showing (copy enclosed) 25 long distance telephone calls billed for OAN Services Inc. -clearing house for Comm.Express. I called OAN (1-800-892-8424) and they explained they are only the clearinghouse and refused to give any number or address to communicate to Comm.Express. They agreed to contact Comm.Express in order to request Comm.Express contact me!.... I do not know if Comm.Express is connected with WordCom or how it came to my bill and life!*

*Comm.Express rates for Long Distance calls are different than AT&T - they are charging more than AT&T - and I am not willing to pay for Comm.Express services that I did not request or authorize.*

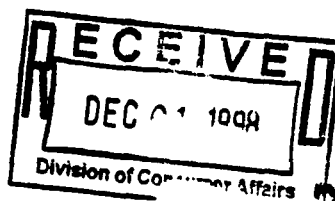
*Please look into this matter and advise me my rights under this matter.*

Thank you.

Sincerely

*Santiago Abella*

Santiago Abella  
3910 N. Clearfield Ave.  
Tampa, Fl. 22603  
33603



RECEIVED  
NOV 30 1998



TELEPHONE NUMBER 813 223-1124 700512  
 ACCOUNT NUMBER 151631062320219000  
 STATEMENT ENDING Nov 16, 1998

OAN billing  
 questions call  
 800 892-8424

**COMMUNICATIONS SERVICES**

Billing for OAN Services, Inc.



The following charges appear on your GTE bill as a service to OAN Services, Inc.  
 Direct your billing questions to the phone number in the yellow border  
 of this page.

**OAN SERVICES, INC. REGULATED SERVICE**

Billing on behalf of Comm.Express

Calls billed to  
 813 223-1124

**Direct Dialed Calls**

Date	Time	Place called		Number called	Period	Min.	
1 Sep 2	7:15 pm	Cuba		537204243	Std	6.4	12.74
2 Sep 5	7:43 am	Brighton	MA	617 783-4292	Day	10.2	1.53
3 Sep 5	9:08 am	Kissimmee	FL	407 348-2335	Day	3.1	.47
4 Sep 5	10:28 am	Puntagorda	FL	941 575-2897	Day	4.1	.62
5 Sep 5	8:00 pm	Puntagorda	FL	941 575-2897	Day	2.1	.32
6 Sep 9	6:28 pm	Cuba		537204342	Std	1	1.99
7 Sep 9	6:29 pm	Cuba		537204243	Std	5	9.95
8 Sep 10	4:21 pm	BeverlyHls	FL	352 527-4125	Day	2.8	.42
9 Sep 10	4:29 pm	Inverness	FL	352 726-1551	Day	2.8	.42
10 Sep 10	5:00 pm	BeverlyHls	FL	352 527-8987	Day	1.4	.21
11 Sep 10	8:56 pm	BeverlyHls	FL	352 527-4127	Day	1	.15
12 Sep 10	8:57 pm	BeverlyHls	FL	352 527-4125	Day	1	.15
13 Sep 10	8:58 pm	BeverlyHls	FL	352 527-4125	Day	1	.15
14 Sep 11	9:08 am	BeverlyHls	FL	352 527-4125	Day	1	.15
15 Sep 12	7:42 am	Brighton	MA	617 783-4292	Day	15.5	2.33
16 Sep 12	8:12 am	Kissimmee	FL	407 348-2335	Day	5.3	.80
17 Sep 12	11:51 am	BeverlyHls	FL	352 527-4125	Day	4	.60
18 Sep 13	7:06 pm	Inverness	FL	352 344-6648	Day	1.3	.20
19 Sep 15	9:03 pm	Miami	FL	305 226-8185	Day	4.9	.74
20 Sep 16	5:52 pm	Inverness	FL	352 344-6648	Day	2.7	.41
21 Sep 19	11:04 am	WPalmBeach	FL	561 965-0788	Day	4.6	.69
22 Sep 19	11:09 am	W Roxbury	MA	617 469-3432	Day	3.9	.59
23 Sep 19	4:25 pm	Miami	FL	305 631-8668	Day	7.6	1.14
24 Sep 19	5:35 pm	BeverlyHls	FL	352 527-8987	Day	10.5	1.58
25 Sep 20	8:49 am	Stamford	CT	203 327-3970	Day	6.4	.96
						<b>Total</b>	<b>\$ 39.31</b>

For questions concerning your bill, call the number listed at the top of this page.  
 The calls on this page were forwarded by OAN Services, Inc., the  
 clearinghouse agent for Comm.Express.

M E M O R A N D U M

June 10, 1999

RECEIVED-FPSC

99 JUN 10 PM 4:16

RECORDS AND  
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CALDWELL) *DWC WPC*

RE: DOCKET NO. 990497-TI - Initiation of show cause proceedings against Communication Express, Inc. d/b/a CommEx for apparent violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection, Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries, and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees.

99-1198-SC

Attached is an Order To Show Cause to be issued in the above-referenced docket. (Number of pages in order -11) (with Attachment A)

DWC/slh  
Attachment  
cc: Division of Communications  
I:990497or.dwc

*Sec 4.5*

**ATTACHMENT(S) NOT ON-LINE**

*1m*

FLORIDA PUBLIC SERVICE COMMISSION - RECORDS AND REPORTING

Requisition for Photocopying and Mailing

Date 6 / 14 / 99

Number of Originals 11

Copies Per Original 17

Requested By Mont K.

Item Presented

Agenda For (Date) \_\_\_\_\_

Order No. 99-1198

In Docket No. 990497-TI

Notice of \_\_\_\_\_

For (Date) \_\_\_\_\_

In Docket No. \_\_\_\_\_

Other \_\_\_\_\_

Special Handling Instructions

Distribution/Mailing

Number	Distributed/Mailed To
<u>17</u>	<u>Commission Offices</u>
<u>①</u>	<u>Docket Mailing List - Mailed</u>
<u>Ø</u>	<u>Docket Mailing List - Faxed</u>

Number	Distribution/Mailed To
_____	_____
_____	_____
_____	_____

Note: Items must be mailed and/or returned within one working day after issue unless specified here:

Print Shop Verification

Job Number 137

Verified By W.S.

Date and Time Completed 6-15

Job Checked For Correctness and Quality (Initial) \_\_\_\_\_

Mail Room Verification

Date Mailed \_\_\_\_\_

Verified By \_\_\_\_\_