

TALBOTT  
VANDIVER

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center, 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

MEMORANDUM

AUGUST 1, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (ISLER) *iji*  
DIVISION OF LEGAL SERVICES (LUGO) *scl* / *MLB*

RE: DOCKET NO. 960816-TI - CANCELLATION BY THE FLORIDA  
PUBLIC SERVICE COMMISSION OF INTEREXCHANGE  
TELECOMMUNICATIONS CERTIFICATE NO. 4039 ISSUED TO WEXL  
TELECOM, INC. FOR VIOLATIONS OF RULES 25-24.480 (1)(a)  
and 25-24.480 (3)(a) and (b), FLORIDA ADMINISTRATIVE  
CODE, REPORTING REQUIREMENTS.

AGENDA: AUGUST 13, 1996 - REGULAR AGENDA - PROPOSED AGENCY ACTION  
- INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\CMU\WP\960816.RCM

CASE BACKGROUND

- Certificate number 4039 was issued to WEXL Telecom, Inc. (WEXL or the company) on June 28, 1995.
- The Division of Consumer Affairs referred seven complaints to Communications staff to which WEXL did not respond. Consumer Affairs asked that staff take appropriate action.
- Communications staff attempted unsuccessfully to reach WEXL by calling the telephone number in the Master Commission Directory. In addition, staff called directory assistance and was advised the number had been changed to a toll-free number. When staff attempted to call the toll-free number, a recording was reached advising the call could not be completed as dialed.

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FPSC-RECORDS/REPORTING

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission cancel WEXL Telecom, Inc.'s Interexchange Telecommunications Certificate No. 4039, if it fails to pay a \$5,000 fine and provide staff the correct mailing address, liaison information and other information as required by Rules 25-24.480 (1)(a), (3)(a), and (3)(b), Florida Administrative Code?

**RECOMMENDATION:** Yes.

**STAFF ANALYSIS:** Rule 25-24.474, Florida Administrative Code, establishes the requirements for cancellation of an interexchange telephone company (IXC) certificate. The rule provides for the Commission to cancel a certificate for violation of Commission Rules and Orders.

Rule 25-24.480 (1)(a), Florida Administrative Code, incorporates Rule 25-4.043, F.A.C., and states 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."

The Division of Consumer Affairs made 16 attempts to get WEXL to respond to seven complaints. The attempts included five telephone calls, nine mailings through the U.S. Postal Service, including two certified letters, and two faxes. The complaints were referred to Communications staff for appropriate action.

Communications staff called the telephone number listed in Master Commission Directory files and received a recorded message that the number had changed to a toll-free number. Staff called the toll-free number and received a recorded message that the call cannot be completed as dialed and to call the 800 information operator. Staff called the 800 information operator and was advised there was no listing for WEXL.

Rule 25-24.480 (3)(a) and (b), F.A.C. provides that each company shall file with the Divisions of Communications and Records and Reporting within 10 days after the changes occur: the street address of the certificate holder, and the name, title, and phone number of the individual responsible for contact with the Commission.

It has been well over 10 days and staff has not been informed of the provider's correct mailing address, phone number, or liaison information. Therefore, staff recommends that WEXL's certificate be cancelled unless it pays a \$5,000 fine and provides

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staff with the information required in accordance with Rules 25-24.480 (3)(a) and (3)(b), Florida Administrative Code, within 30 days of the order becoming final.

In previous dockets involving violation of the response requirement rule, fines and/or settlements have ranged from up to \$4,800 to cancellation of the certificate. In this case, staff is recommending a fine of \$5,000. Staff's mail to WEXL has not been returned by the U. S. Post Office, and, in fact, WEXL has signed for certified mail from the Commission. Consumers of this state depend on staff's ability to communicate effectively with companies regulated by the Commission. Therefore, based on the company's disregard of the Commission's response and reporting requirements, staff believes a \$5,000 fine is appropriate.

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**ISSUE 2:** Should all certificated interexchange telecommunication companies be ordered to discontinue providing interexchange telecommunications service to WEXL Telecom, Inc. in accordance with Rule 25-24.4701 (3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited?

**RECOMMENDATION:** Yes.

**STAFF ANALYSIS:** It appears that WEXL Telecom, Inc. may be providing service. Rule 25-24.4701 (3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited, states in pertinent part:

The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

The Division of Consumer Affairs notified staff that it had seven outstanding complaints logged against WEXL Telecom, Inc. All seven consumers complained that their long distance service had been switched to WEXL without their authorization. Since WEXL did not respond to Consumer Affairs' staff, it is not known whether WEXL rerouted the calls to the consumers' preferred carriers or refunded the switching fees, as required by Rule 25-4.118 (5), Florida Administrative Code.

Therefore, to prevent WEXL from billing and/or collecting resold service to other Florida consumers, staff recommends that the Commission order all certificated interexchange telecommunication companies to discontinue providing intrastate long distance service to this company.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes. If no person whose substantial interests are affected files a protest within 21 days of the issuance of the order, the order will become final, and the provider will have 30 days from the date the order becomes final to pay a \$5,000 fine and provide staff with the information as required by Rules 25-24.480 (3)(a) and (3)(b), Florida Administrative Code, or its certificate will be cancelled without further Commission action. The fine is to be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. Upon payment of the fine or cancellation of the certificate, this docket should be closed without further Commission action.

**STAFF ANALYSIS:** If the Commission adopts staff's recommendation in Issue 1, then WEXL Telecom, Inc. will have 30 days from the date the order becomes final to pay a \$5,000 fine, which should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, and provide staff the information called for by Rule 25-24.480 (3)(a) and (3)(b), Florida Administrative Code, Reporting Requirements, or its certificate will be cancelled without further Commission action. If no protest is filed, the docket should be closed after the conclusion of the 30 day period.