

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)
 proceedings for failure to file 1988)
 annual reports)
)
 800 TELEPATCH SERVICE, INC.) DOCKET NO. 890565-TI
) ORDER NO. 22144
) ISSUED: 11-6-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION
AND
ORDER CANCELLING CERTIFICATE NO. 78 AND
INITIATING SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission of its intent to cancel Certificate of Public Convenience and Necessity No. 78 held by 800 Telepatch Service, Inc. (Telepatch). This action is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029.

Rule 25-24.480, Florida Administrative Code (the Rule), requires that each interexchange carrier (IXC) file reports with this Commission. The reports, due on January 31st of each year, require basic company information as well as construction and capacity data. On February 21, 1989, Telepatch filed its 1988 IXC annual report with the Commission; therefore, Telepatch is in apparent violation of this rule.

Order No. 21426, issued June 22, 1989, announced the initiation of a show cause proceeding against Telepatch. Upon review, Staff learned that we did not intend to initiate a show cause proceeding against this company, and on July 10, 1989, we issued Order No. 21426-A, establishing a 45-day period during which Telepatch could elect to pay a fine in lieu of our

DOCUMENT NUMBER-DATE

10861 NOV -6 1989

FPSC-RECORDS/REPORTING

ORDER NO. 22144
DOCKET NO. 890565-TI
PAGE 2

initiating a show cause proceeding. We offered to impose a \$4,000 fine on Telepatch because the company had apparently failed to file an annual report in a timely manner for the second consecutive year. Order No. 21426-A permitted Telepatch to pay \$2,000 by July 28, 1989, with the remainder of the fine being suspended until the 1989 report is due.

On August 14, 1989, Telepatch responded to a June 12, 1989 Staff request to reformat its tariff. In this response, the company claimed that, through US Sprint Communications Company's (Sprint's) negligence, 65% of Telepatch's customer base was lost and the company was forced to seek the protection of the bankruptcy court. On August 23, 1989, Sprint responded to Staff's request for an explanation of the circumstances surrounding Telepatch and said that service to Telepatch was discontinued for failure to make payments on its account which totaled \$258,907.54 on June 20, 1989. While it appears that Telepatch no longer provides telecommunications services, the company is still a corporation registered with the Secretary of State. As such, the company could initiate service at any time under its certificate. In light of the company's statement that it no longer needs Certificate No. 78, we intend to cancel that certificate. Moreover, if this Proposed Agency Action becomes final, we direct all local exchange companies and IXCs to discontinue intrastate service with Telepatch.

Moreover, we deem the imposition of a \$4,000 fine to be appropriate in this case. In addition to its apparent failure to comply with our rules, an issue has been raised as to whether the company has acted in the public interest. The imposition of a fine will serve two purposes. First, it will establish a penalty against a company which has violated our rules. Second, it will serve as a record of the company's history in the event we are asked to judge this company's qualifications if it seeks to enter the long distance market in the future. Therefore, we shall require Telepatch to show cause why it should not be fined \$4,000 for violation of Rule 25-24.480.

In the event that Telepatch elects to pay the \$4,000 fine within 30 days of the issuance date of this Order and no proper protest is timely filed against the Proposed Agency Action, our Staff is delegated the authority to close Docket No. 890565-TI administratively.

ORDER NO. 22144
DOCKET NO. 890565-TI
PAGE 3

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that 800 Telepatch Service, Inc. shall show cause in writing why a \$4,000 fine should not be assessed against it for its failure to file timely reports required by Rule 25-24.480, Florida Administrative Code. It is further

ORDERED that the written response by 800 Telepatch Service, Inc., to this show cause order must be received by the Director of Records and Reporting, 101 E. Gaines Street, Tallahassee, Florida 32399-0870, by the time established below. It is further

ORDERED that any response filed by 800 Telepatch Service, Inc., must contain specific statements of law and fact. It is further

ORDERED that the failure by 800 Telepatch Service, Inc., 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. It is further

ORDERED that the failure by 800 Telepatch Service, Inc., to request a hearing in any written response that is submitted will constitute a waiver of any right to a hearing.

ORDERED that the terms of this order are severable and our intent to cancel Certificate of Public Convenience and Necessity No. 78 held by 800 Telepatch Service, Inc., is Proposed Agency Action. It is further

ORDERED that all of the terms of this Order requiring 800 Telepatch Service, Inc., to show cause shall be considered Final Agency Action. It is further

ORDERED that, in the event that 800 Telepatch Service, Inc., elects to pay a \$4,000 fine within 30 days of the issuance date of this Order in lieu of showing cause and no proper protest is timely filed against the Proposed Agency Action, we hereby delegate authority to our Staff to close Docket No. 890565-TI administratively.

ORDER NO. 22144
DOCKET NO. 890565-TI
PAGE 4

By ORDER of the Florida Public Service Commission,
this 6th day of NOVEMBER, 1989.


STEVE TRIBBLE Director
Division of Records and Reporting

(S E A L)

DLC

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.

As identified in the body of this order, our action canceling the Certificate of Public Convenience and Necessity of 800 Telepatch Service, Inc., is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. 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 25-22.029(4), 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

ORDER NO. 22144
DOCKET NO. 890565-TI
PAGE 5

101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on November 27, 1989. In the absence of such a petition, this order shall become effective November 28, 1989, as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

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 relevant portion of this order becomes final and effective on _____, 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 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. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 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 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.