

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for authority to)	DOCKET NO. 900300-TI
provide interexchange telecommunications))	ORDER NO. 24146
service by PHOENIX NETWORK, INC.)	ISSUED: 2/22/91
_____)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH
 MICHAEL McK. WILSON

ORDER RESOLVING SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

As a result of a customer inquiry received by the Division of Consumer Affairs on August 24, 1989, it was learned that PASCOM/PHOENIX NETWORK, INC. was reselling US Sprint's long distance services. On October 30, 1989, a docket was opened to determine if PHOENIX NETWORK, INC. (PHOENIX or the Company) should be certificated as a telephone company in Florida.

PHOENIX did not respond to the data request within the given time period (21 days), but did call Mr. David Lee of PHOENIX NETWORK, INC., on November 29, 1989. He advised that PHOENIX was completing the data request as requested, however, they requested an IXC application also be mailed to their attorney. The second application was mailed on November 30, 1989.

On January 10, 1990, the Company filed a response to the original data request. On February 5, 1990 a letter was mailed to the attorney stating that PHOENIX NETWORK, INC. was a reseller and to submit the completed application by February 28, 1990. On March 15, 1990, a second letter was sent to the Company's attorney, again requesting the completed application. An additional application was mailed on March 26, 1990. Finally, on April 20, 1990, PHOENIX NETWORK, INC. filed an application and tariff. PHOENIX was granted Certificate No. 2479 on October 11, 1990.

Since the Company had been operating in Florida without a certificate since July, 1989, we also issued Order No. 23499 requiring PHOENIX NETWORK, INC. to show cause in writing why it should not be fined \$5,000 for noncompliance with Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity required to operate as an interexchange carrier (IXC).

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On October 8, 1990, PHOENIX responded to Order No. 23499. Briefly, PHOENIX's five arguments are as follows:

- 1) PHOENIX has at all times acted in good faith with the Commission and has abided by its decisions in treating PHOENIX as an interexchange carrier as defined by the Commission.
- 2) PHOENIX's expansion into Florida was unintentional. PHOENIX first became aware that it was billing a customer in Florida when it received a letter from the Florida Public Service Commission dated October 30, 1989. This was the company's first major expansion out of the west coast region and there was no system in place to inform management that it had begun billing a customer in a new jurisdiction. Upon notification from the Commission, PHOENIX determined that it had been billing a customer in Florida as early as July 1989 and has cooperated with the Commission in becoming certificated in Florida, filing an application for authority to provide interexchange telecommunication service as required by Rule 25-24.470 Florida Administrative Code.
- 3) PHOENIX had been informed by its legal counsel that due to the nature of its operations, it would not be characterized as a reseller of telecommunication services by the California Public Utilities Commission and the Company therefore believed it would not be characterized as such by other states.
- 4) PHOENIX has no employees or property in Florida, nor does it lease any lines from other carriers.
- 5) At no time has PHOENIX intentionally disregarded the jurisdiction of the Commission to exercise its authority over telecommunication services in Florida.

PHOENIX has not put forward any argument that could be construed as either an adequate defense to the allegations described above and in Order No. 23499.

PHOENIX states that it unknowingly extended its service area into Florida. From a regulatory perspective, this is simply inadequate as a defense. For regulatory purposes, a company can be held responsible for actions it either knew or should have known were taking place. Providing interexchange telecommunications

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service is a very sophisticated business and IXCs can and should be expected to operate in a diligent and informed manner.

PHOENIX also argues that, based on an opinion regarding California law, it assumed that it would be treated similarly in other states. This argument is simply irrelevant. A company is responsible for complying with the laws and administrative rules of Florida when it begins operating in Florida. Simply put, a company is on constructive notice of the need to inquire regarding jurisdictional differences.

Finally, PHOENIX argues that it has no employees or property in Florida. Again, this argument is irrelevant. By providing interexchange service to a customer within Florida for interexchange service, PHOENIX subjected itself to Commission jurisdiction.

PHOENIX has failed to state any argument that would sustain an adequate defense. Therefore, we find it appropriate to impose the \$5,000 proposed in Order No. 23499.

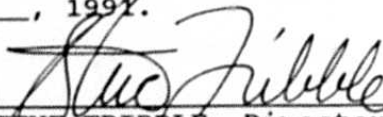
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that PHOENIX NETWORK, INC. shall be required to pay the \$5,000 fine imposed in Order No. 23499 for violation of Rule 25-24.470, Florida Administrative Code. It is further

ORDERED that if PHOENIX fails to pay the \$5,000 within thirty days of this Order, its Certificate No. 2479 shall be canceled. It is further

ORDERED that this docket shall remain open thirty days pending payment of the fine or cancellation of the certificate, after which the docket shall be automatically closed.

By ORDER of the Florida Public Service Commission, this 22nd day of FEBRUARY, 1991.


 STEVE TRIBBLE, Director
 Division of Records and Reporting

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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.

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.