

Swafford *JS*

Clark *JTC*

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

MEMORANDUM

May 9, 1991

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS [SIRIANNI] *MRS*
DIVISION OF LEGAL SERVICES [KURLIN] *pkc* *H*

RE : DOCKET NO. 910134-TI, 910137-TI, 910130-TI, 910131-TI,
910128-TI, 910136-TI

AGENDA: MAY 21, 1991 - CONTROVERSIAL PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

CASE BACKGROUND

In 1991, fourteen (14) IXC's did not file their 1990 annual report by the January 31, 1991 deadline required by Rule 25-24.480(5). Staff notified the IXC's by letter dated November 16, 1990 and again on January 3, 1991 reminding them that the due date for the 1990 annual report was approaching. On February 5, 1991, staff sent a third notice of the filing requirements to the 11 IXC's that had still not filed their annual report.

On February 21, 1991, staff filed a recommendation requesting the Commission to initiate a show cause proceeding against fourteen (14) interexchange telephone companies that did not file their 1990 IXC annual report by January 31, 1991.

At the March 5, 1991 Agenda Conference the Commission voted to initiate a show cause proceeding against the fourteen (14) IXC's for failure to file the required 1990 IXC Annual Report in a timely manner which is in violation of Commission Rule 25-24.480. The show cause orders were issued on March 18, 1991. The orders stated that a written response to the show cause orders was due by April 8, 1991 or acceptance of the Commission's offer of settlement was due by April 17, 1991. The orders further stated, that if the companies did not respond in writing or pay the imposed fine the companies' respective certificates would be canceled.

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Two companies have accepted the Commission's offer of settlement and their respective dockets have been closed. Six (6) companies did not respond to the show cause orders. The certificates of the six companies have been canceled and their dockets closed. This recommendation will address the remaining six companies. Attachment A illustrates the action taken with all fourteen (14) companies that were show caused in 1991 for violation of Commission Rule 25-24.480.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission cancel Card*Tel, Inc.'s IXC Certificate of Public Convenience and Necessity for failure to comply with Commission Rule 25-24.480?

RECOMMENDATION: Yes. Staff recommends the Commission cancel Certificate No. 2109, issued to Card*Tel, Inc. on July 24, 1988 and the docket be closed.

STAFF ANALYSIS: At the February 21, 1991 agenda conference, the Commission voted to initiate a show cause proceeding against Card*Tel, Inc. (Card*Tel) for failure to file the required 1990 annual report which is in violation of Commission Rule 25-24.480. The conditions of the resulting show cause order (Order No. 24248 issued March 18, 1991 Attachment B, p. 13) required the Company to show cause why it should not have its certificate canceled. A written response to the show cause order was required by April 8, 1991 or the Company's certificate would be canceled.

Staff received a response to the show cause order (Attachment C, p. 17) from Card*Tel and a copy of its 1990 annual report on March 29, 1991. The company has requested that its certificate not be canceled. Card*Tel believes that its request is appropriate for the following reasons:

1. Card*Tel states that it did not intentionally disregard or ignore Commission Rule 25-24.480.
2. Card*Tel has been experiencing severe financial problems for longer than one year and has sought the protection afforded by Chapter XI of the U.S. Bankruptcy Code by filing a petition on March 6, 1991. (Case No. 90-20676-BKC-SMW)
3. Card*Tel states that the controller in charge of filing the annual report resigned from the company on or about January 25, without informing his successor of the annual report deadline of January 31.
4. Card*Tel claims that it only provides validation and authorization services to the telecommunications industry, validating or authorizing credit card or calling card usage. Card*Tel claims that several of the Regional Bell operating Companies require it to have an IXC certificate in order to access their data base for validation purposes.

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ISSUE 21: Should the Commission cancel Payline Systems Inc.'s certificate of Public Convenience and Necessity for failure to comply with Commission Rule 25-24.480?

RECOMMENDATION: No. Staff recommends the Commission fine Payline Systems, Inc. \$1,000 and waive the cancellation of its certificate for failure to comply with Commission Rule 25-24.480.

STAFF ANALYSIS: At the February 21, 1991 agenda conference, the Commission voted to initiate a show cause proceeding against Payline System Inc. (Payline) for failure to file the required 1990 annual report which is in violation of Commission Rule 25-24.480. The conditions of the resulting show cause order (Order 24248, Attachment B, p. 13) required the company to show cause why their certificate should not be canceled. A written response to the show cause order was required by April 8, 1991 or the Company's certificate would be canceled.

Payline filed its 1990 annual report on March 18, 1991. On April 16, 1991, Payline filed a response (Attachment D, p. 19) to the show cause order requesting the Commission to waive late filing penalties for the 1990 annual report. The company claims that this was the first annual report it was required to file with the Commission and the annual report was confused with that required by the Florida Department of State.

Staff believes that as long as a company holds an IXC certificate, regardless of its certification date, it is the responsibility of that company to abide by Commission Rule 25-24.480 which requires IXC's to file their annual report with the Commission by January 31, of each year. Payline was granted its certificate on February 13, 1990 and at that time it was made aware of the Commission's rules and regulations.

Since Payline wishes to continue the provision of long distance service, staff recommends that the Commission impose a \$1,000 fine on Payline and waive cancellation of its certificate. This amount is consistent with the Commission's decision on fine amounts at the February 21, 1991 agenda conference for 1st time violators. However, if Payline does not pay the \$1,000 fine, within 20 days of the issuance of the order, staff recommends that the Commission cancel Payline's Certificate No. 2389.

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5. Card*Tel stated that it does not currently provide any IXC services and has not during the last year.

Although Card*Tel claims that it did not intentionally ignore Commission Rule 25-24.480, the company was certificated in 1988 and in 1989 paid a \$500.00 fine for violation of this rule. Staff believes that the company should be well aware of the Commission's rules and regulations, including any filing deadlines. It is also staff's opinion that the financial and personnel problems that the company is experiencing is not sufficient reason for failure to comply with any Commission Rule.

In addition, Card*Tel has not provided service for over one year, nor has it paid its regulatory assessment fee for either period in 1990. According to Commission Rule 25-24.474, the Commission has the authority to cancel a company's certificate for failure to provide service for a period of six (6) months.

Card*Tel asserts that it requires an IXC certificate to gain access to the various RBOC's data bases. However, the validation and authorization of credit cards or calling cards, without the provision of any type of transport, does not require an IXC certificate. In Florida, any company that provides such services is not required to obtain an IXC certificate in order to gain access to the data base of the RBOC operating in this region. If RBOC's in other operating areas require an IXC certificate, the company needs to obtain a certificate from the respective state where operation is occurring.

It is staff's opinion that, because Card*Tel has not provided end user service in over a year, and does not require a certificate for the validation services that it is providing, its certificate should be canceled and the docket be closed.

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ISSUE 31 Should the Commission find MTS-Tampa and Sunforest Communications Group in violation of Rule 25-24.480 and fine them \$1,000 each for failure to comply?

RECOMMENDATION: Yes. Staff recommends the Commission fine MTS Tampa and Sunforest Communications Group \$1,000 each for violation of Commission Rule 25-24.480 which requires IXC's to file an annual report with the Commission by January 31, of each year. If MTS-Tampa and Sunforest do not pay the \$1,000 fine within 20 days of the issuance of the order, their certificate should be cancelled and the dockets closed.

STAFF ANALYSIS: At the February 21, 1991 agenda conference, the Commission voted to initiate a show cause proceeding against MTS-Tampa and Sunforest Communication Group (Sunforest) for failure to file the required 1990 IXC annual report which is in violation of Commission Rule 25-24.480. The conditions of the resulting show cause order (Order No. 24247 issued March 18, 1991, Attachment E, p. 21) required the Companies to show cause why they should not be fined \$1,000. The show cause order further stated that if the company did not want to go through the show cause process it could pay the show cause amount by April 17, 1991 and the docket would be closed. If the Companies chose to provide a written response to the show cause order, it was required by April 8, 1989.

On April 9, 1991, staff received responses to the show cause order from MTS-Tampa and Sunforest (Attachment F, p. 25; Attachment G, p. 27) claiming that the report was completed and mailed in time to be delivered by the deadline. The annual reports for both companies were received by the Commission on February 1, 1991. The companies claim that they have been unsuccessful in determining the possibility of their reports being received by the Commission and not recorded until February 1, 1991. In a telephone conversation on February 4, 1991 with Mr. Jim Plautz, staff thoroughly explained the mail handling process followed by the Commission. It was explained to Mr. Plautz that all mail received between the Commission's official operating hours of 7:45 am and 4:45 pm are recorded that same day.

MTS-Tampa and Sunforest have held IXC certificates since June 25, 1986 and September 14, 1987, respectively. Therefore, these companies have been certificated IXC's since the annual report rule came into effect in 1987. Staff believes that as long as a Company holds an IXC Certificate it is the responsibility of that company to abide by Commission Rule 25-

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24.480 which requires IXCs to file their annual report with the Commission by January 31, of each year.

Furthermore, staff notified the companies by letter dated November 16, 1990 and again on January 3, 1991 reminding them that the January 31 deadline for the 1990 annual reports was approaching. It should also be noted that MTS Tampa and Sunforest have previously violated Commission Rule 25-24.480 in 1988, submitting their reports February 1, 1989 and February 3, 1989, respectively. However, the Commission did not take action on any company that filed a 1988 annual report before February 9, 1989 and thus these companies were not notified by the Commission as violating this rule. For this reason these companies have been treated as first time offenders in 1990.

Also, MTS Tampa and Sunforest have stated in their response letter that they waive the right to appear at a public hearing in Tallahassee due to the expense in both manpower and resources.

It is staff's position that MTS-Tampa and Sunforest have not provided any new information that would be an appropriate excuse for not filing the annual report in a timely manner. Therefore, staff believes that the Commission should require these Companies to pay the fine of \$1,000 each. However, if MTS-Tampa and Sunforest do not pay the \$1,000 fine within 20 days of the issuance order, their certificate should be cancelled and the dockets closed.

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ISSUE 4: Should the Commission find Communication Catalyst Corporation in violation of Commission Rule 25-24.480 and fine them \$1,000 for failure to comply?

RECOMMENDATION: Yes. Staff recommends the Commission fine Communications Catalyst Corporation \$1,000 for violation of Commission Rule 25-24.480 which requires IXC's to file an annual report with the Commission by January 31, of each year. If Comm. Catalyst does not pay the fine, within 20 days of the issuance of the order, staff recommends that the Commission cancel Comm. Catalyst's Certificate No. 2448.

STAFF ANALYSIS: At the February 21, 1991 Agenda Conference, the Commission voted to initiate a show cause proceeding against Communications Catalyst Corporation (Comm. Catalyst) for failure to file the required 1990 IXC Annual Report in a timely manner which is in violation of Commission Rule 25-24.480. The conditions of the resulting order (Order No. 24247 issued March 18, 1991, Attachment E, p 21) required it to show cause why it should not be fined \$1,000. The show cause order further stated that if the company did not want to go through the show cause process it could pay the show cause amount by April 17, 1991 and the docket would be closed. If the Company chose to provide a written response to the show cause order, it was required by April 8, 1991.

On April 2, 1991, Comm. Catalyst responded to the show cause order (Attachment H, p. 33) claiming that the postmark on its filing was definitely in January 1991. The Annual Report submitted by Comm. Catalyst was received by the Commission on February 4, 1991. The company stated that it had addressed this issue in a previous letter dated March 1, 1991 (Attachment I, p 31). In addition, the company stated in this letter that it is not actively engaged in doing business in the state of Florida at this time. By Rule 25-424.474(1)(b) the Commission has authority to cancel an IXC's certificate for failure to provide service for a period of six (6) months. Although the company is not currently providing service, staff believes as long as a company holds an IXC certificate it is the responsibility of that company to abide by the Commission rules and regulations. Comm. Catalyst was granted its certificate on July 31, 1990; at that time it was made aware of these rules and regulations. These rules included Commission Rule 25-24.480 which requires interexchange companies to file an IXC Annual Report with the Commission by January 31, of each year.

Also, staff notified the company by letter dated November 16, 1990 and again on January 3, 1991 reminding it that the 1990

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Annual Report must be received at the Commission by the January 31 deadline or penalties may be invoked.

Since Comm. Catalyst was only certificated in July 1990 and may wish to retain the option to provide long distance service in the future, staff recommends that the Commission fine Comm. Catalyst \$1,000, rather than cancel its certificate. However, if Comm. Catalyst does not pay the fine, within 20 days of the issuance of the order, staff recommends that the Commission cancel Comm. Catalyst's Certificate No. 2448.

ISSUE 5: Should the Commission find Excel Telecommunications, Inc. in violation of Rule 25-24.480 and fine them \$1,000 for failure to comply?

RECOMMENDATION: Yes. Staff recommends the Commission fine Excel Telecommunications, Inc. \$1,000 for violation of Commission Rule 25-24.480, which requires IXC's to file an annual report with the Commission by January 31, of each year. If Excel does not pay the \$1,000 fine within 20 days of the issuance of the Order, then Excel's certificate should be cancelled and the docket closed.

STAFF ANALYSIS: At the February 21, 1991 agenda conference, the Commission voted to initiate a show cause proceeding against Excel Telecommunications, Inc. (Excel) for failure to file the required 1990 IXC annual report which is in violation of Commission Rule 25-24.480. The conditions of the resulting show cause order (Order No. 24247 issued March 18, 1991, Attachment E, p. 21) required the Company to show cause why it should not be fined \$1,000. The show cause order further stated that if the company did not want to go through the show cause process it could pay the show cause amount by April 17, 1991 and the docket would be closed. If the Company chose to provide a written response to the show cause order, it was required by April 8, 1989.

On April 9, 1991, Excel filed a response to the show cause order, (Attachment J, p. 37) claiming that it did not receive staff's first two notices mailed to all certificated IXC's. The company claims it was not aware that the report was due until after receiving staff's third notice sent out by registered mail on February 5, 1991. The company received staff's third letter only after informing staff through a telephone conversation of a

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change of address. The company was advised by staff to update its contact information through written correspondence. Excel's 1990 Annual Report was received by the Commission on March 5, 1991.

Staff's records show that a blank copy of the 1990 Annual Report was mailed to Excel on November 16, 1990 and again on January 3, 1991. It is staff's practice to send any correspondence to a certificated company through the official company address on file with the Division of Records and Reporting, unless otherwise informed by the company (which staff did in the case of the third mailing). The address on file with the Division of Records and Reporting was not officially changed until March 18, 1991. Rule 25-24.480(4)(a) requires IXC's to file updated information on a change of address within ten days after such changes occur. It is the Company's responsibility to update these records whenever a change in contact takes place. Therefore, staff is recommending the Commission fine Excel the \$1,000 show cause amount.

If Excel does not pay the \$1,000 fine within 20 days of the issuance of the Order, then Excel's certificate should be cancelled and the docket closed.

ISSUE 6: Should the dockets opened on Payline Systems, Inc. MTS-Tampa, Sunforest Communications Group, Communication Catalyst Corporation and Excel Telecommunications, Inc. be closed?

RECOMMENDATION: No. Staff recommends that these dockets should be held open pending payment of the fines. Staff also recommends that if the fine is paid within 20 days after the issuance of the final order, then staff will be authorized by the Commission to administratively close these dockets. Staff further recommends that if the fine is not paid within 20 days after the issuance of the final order, then the IXC's Certificate of Public Convenience and Necessity be canceled, the imposed fine be waived and the docket closed.

STAFF ANALYSIS: In the dockets listed above, staff is recommending the Commission impose some fine against each of the companies. Therefore, staff believes these dockets need to remain open pending payment of the imposed penalty or cancellation of the companies certificate if the fine is not paid.

INTEREXCHANGE COMPANIES SHOW CAUSED IN 1991 FOR VIOLATION OF COMMISSION RULE 25-24.400

COMPANY NAME	DOCKET & ORDER NUMBER	ISSUE NUMBER	TYPE OF PENALTY PROPOSED BY THE COMMISSION	RESPONSE TO THE ASSESSED PENALTY	DATE CERTIFICATED	DATE FILED	STAFF'S RECOMMENDATION OR FINAL ACTION TAKEN
AFFINITY NETWORK, INC.	910127-TI 24247		SHOW CAUSE \$2,000 (SUSPEND \$1,000)	PAID \$1,000 PENALTY	08/03/90	02/12/91	DOCKET CLOSED
AMERICAN LONG DISTANCE	910128-TI 24247		SHOW CAUSE \$2,000 (SUSPEND \$1,000)	PAID \$1,000 PENALTY	05/28/90	02/19/91	DOCKET CLOSED
CARD-TEL, INC.	910129-TI 24248	1	CANCEL CERTIFICATE	FILED A RESPONSE TO THE SHOW CAUSE ORDER	07/24/88	03/29/91 01/26/90 04/04/89	CANCEL CERTIFICATE
COMM. CATALYST CORP.	910130-TI 24247	4	SHOW CAUSE \$2,000 (SUSPEND \$1,000)	FILED A RESPONSE TO THE SHOW CAUSE ORDER	07/31/90	02/04/91	REQUIRE COMM. CATALYST TO PAY \$1,000
EXCEL COMMUNICATIONS, INC.	910131-TI 24247	5	SHOW CAUSE \$2,000 (SUSPEND \$1,000)	FILED A RESPONSE TO THE SHOW CAUSE ORDER	03/21/90	03/04/91	REQUIRE EXCEL COMM. TO PAY \$1,000
FOX COMMUNICATIONS CORPORATION	910132-TI 24248		CANCEL CERTIFICATE	NO RESPONSE	10/10/90	NO REPORT	CERTIFICATE CANCELED
LONG DISTANCE NETWORK SVS, INC.	910133-TI 24248		CANCEL CERTIFICATE	NO RESPONSE	06/13/90	03/12/91	CERTIFICATE CANCELED
MTS TAMPA	910134-TI 24247	3	SHOW CAUSE \$2,000 (SUSPEND \$1,000)	FILED A RESPONSE TO THE SHOW CAUSE ORDER	06/25/86	02/01/91 01/18/90 01/01/89 01/22/88	REQUIRE MTS TAMPA TO PAY \$1,000
PAYLINE SYSTEMS, INC.	910136-TI 24248	2	CANCEL CERTIFICATE	FILED A RESPONSE TO THE SHOW CAUSE ORDER	02/13/90	03/18/91	WAIVE CANCELLATION PAY \$1,000 FINE
PENTAGON COMPUTER DATA, LTD.	910037-TI 24248		CANCEL CERTIFICATE	NO RESPONSE	03/05/90	NO REPORT	CERTIFICATE CANCELED
ON LINE COMMUNICATIONS, INC.	910135-TI 24248		CANCEL CERTIFICATE	NO RESPONSE	05/21/90	NO REPORT	CERTIFICATE CANCELED
SUNFOREST COMM. GROUP	919137-TI 24247	3	SHOW CAUSE \$2,000 (SUSPEND \$1,000)	FILED A RESPONSE TO THE SHOW CAUSE ORDER	09/14/87	02/01/91 01/18/90 02/03/89 01/22/88	REQUIRE SUNFOREST TO PAY \$1,000
T.H. OLD TOWN	910138-TI 24249		SHOW CAUSE \$4,000	NO RESPONSE	01/20/87	02/07/91 01/23/90 01/31/89 04/12/88	WAIVE \$4,000, CERTIFICATE CANCELED
TELECOM XPRESS, INC.	910147-TI 24248		CANCEL CERTIFICATE	NO RESPONSE	04/26/90	NO REPORT	CERTIFICATE CANCELED

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We find it appropriate, pursuant to Section 364.285, Florida Statutes, to require these IXCs to show cause why they should not have their certificates revoked. In the event that the companies fail to show cause within the time specified below, we hereby direct our Staff to cancel the non-complying company's certificate and to close the relevant docket under the administrative authority delegated here.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the following interexchange carriers shall show cause in writing why their Certificates of Public Convenience and Necessity should not be cancelled for their failures to file timely the report required by Rule 25-24.480, Florida Administrative Code. Those interexchange carriers are: Card*Tel, Inc.; Fox Communications Corporation; Network Services, Inc. d/b/a Long Distance Network Services, Inc.; Online Communications, Inc.; Payline Systems, Inc.; Telcom Xpress, Inc.; and Pentagon Computer Data, Ltd. It is further

ORDERED that the written responses to this Order by the interexchange carriers listed in the caption of this Order must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the time established below. It is further

ORDERED that any response filed by those interexchange carriers listed in the caption of this Order must contain specific statements of fact and law. It is further


ORDERED that failure by any of the interexchange carriers listed in the caption of this Order to file a written response within the prescribed time period will constitute an admission of noncompliance, resulting in all allegations being admitted. It is further

ORDERED that failure by any of the interexchange carriers listed in the caption of this Order to request a hearing in any written response that is submitted will constitute a waiver of any right to a hearing in this matter. It is further

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ORDERED that if any interexchange carrier listed in the caption of this Order fails to respond in writing to this Order, that company's certificate shall be cancelled 30 days after the issuance of this Order, and the Staff of the Florida Public Service Commission is hereby delegated the administrative authority to close the relevant docket.

By ORDER of the Florida Public Service Commission, this 18th day of MARCH, 1991.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

PAK

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.

This order is preliminary, procedural or intermediate in nature. 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 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)

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and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 8, 1991.

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 pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(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 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.