

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation to ) DOCKET NO. 930977-TP  
Determine if Certificated ) ORDER NO. PSC-94-0040-FOF-TP  
Companies Should Discontinue ) ISSUED: January 12, 1994  
Providing Interexchange )  
Telecommunications service to )  
Dart Communications, Inc. for )  
Violation of Rule 25-24.4701(3), )  
F.A.C., Provision of Regulated )  
Telecommunications Service to )  
Uncertificated Resellers )  
Prohibited )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK  
J. TERRY DEASON, Chairman  
JULIA L. JOHNSON  
DIANE K. KIESLING  
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION  
ORDER REQUIRING DART COMMUNICATIONS, INC. TO  
CEASE AND DESIST PROVIDING REGULATED SERVICES  
WITHOUT A CERTIFICATE AND REQUIRING ALL REGULATED  
INTEREXCHANGE CARRIERS TO DISCONTINUE PROVIDING  
INTRASTATE INTEREXCHANGE TELECOMMUNICATIONS  
SERVICES TO DART COMMUNICATIONS, INC.

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On May 18, 1993, this Commission received a complaint that regarding the unauthorized switching of a consumer's interexchange telecommunications carrier. One of the carriers allegedly involved was Dart Communications, Inc. (Dart). Soon thereafter, our Staff telephoned Dart in order to determine what, if any, services that Dart performs in Florida. As a result of that conversation, Dart was to provide written confirmation of its operations; however, no such information was provided. On June 23, 1993, Staff requested,

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in writing, that Dart provide information regarding its Florida operations. Again, Dart failed to respond to Staff's request.

On September 2, 1993, Staff sent Dart a letter, via Certified U.S. Mail, informing it that it may be in violation of Sections 364.33 and 364.335, Florida Statutes, and Rule 25-24.470, Florida Administrative Code, which require that all intrastate interexchange carriers have a certificate of public convenience and necessity. Staff also informed Dart that, if it failed to respond, pursuant to Rule 25-24.4701(3), Florida Administrative Code, this Commission might order all interexchange carriers to discontinue service to Dart. This letter was returned, "unclaimed".

Under Rule 25-24.4701(3), Florida Administrative Code,

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 burden of demonstrating that it is not providing intrastate interexchange services in violation of any statutes, rules, or orders of this Commission falls squarely on Dart. Since it appears that Dart may be unlawfully reselling or rebilling intrastate interexchange services, pursuant to Rule 25-24.4701(3), Florida Administrative Code, it is hereby ordered to cease and desist reselling or rebilling such services. Moreover, all certificated carriers are hereby ordered to discontinue providing any interexchange telecommunications services to Dart.

It is, therefore,

ORDERED by the Florida Public Service Commission that Dart Communications, Inc. shall cease and desist from providing, reselling, or rebilling for, any interexchange telecommunications services within the State of Florida. It is further

ORDERED that all certificated interexchange telecommunications providers shall discontinue providing any and all intrastate

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interexchange telecommunications services to Dart Communications, Inc. It is further

ORDERED that, unless a person whose interests are substantially affected by the action proposed herein files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, this Order shall become final and this docket shall be closed on the following date.

By ORDER of the Florida Public Service Commission, this 12th day of January, 1994.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

RJP

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.

The action proposed herein 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 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on February 2, 1994.

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In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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