

SWAFFORD *[Signature]*

CLARK *[Signature]* SFC

FLORIDA PUBLIC SERVICE COMMISSION

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

MEMORANDUM

FEBRUARY 21, 1991

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS [SIRIANNI] *MP5*
DIVISION OF LEGAL SERVICES [KURLIN, ADAMS] *pk HP*

RE : DOCKET NO.: 910127-TI, 910128-TI, ~~910129-TI~~
910130-TI, 910131-TI, 910132-TI, 910133-TI,
910134-TI, 910135-TI, 910136-TI, 910137-TI,
910138-TI, 910139-TI, 910037-TI - INITIATION OF SHOW
CAUSE PROCEEDING FOR FAILURE TO FILE 1990 ANNUAL
REPORT

AGENDA: MARCH 5, 1991 - CONTROVERSIAL PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

CASE BACKGROUND

Since the adoption of Commission Rule 25.24-480 (5) in 1987, staff has initiated several show cause proceedings against IXCs that did not comply with this rule. In 1988, sixty (60) IXCs did not file their 1987 annual report by the January 31, 1988 deadline. However, staff only initiated show cause proceedings against 16 companies that had not filed an annual report with the Commission by March 15, 1988 when staff appeared at agenda conference. Staff's leniency in 1988 was based mainly on the fact that this rule was a new requirement for the IXCs.

In 1989, sixty-eight (68) IXCs did not file their 1988 annual report by the January 31, 1989 deadline. Staff initiated show cause proceedings against 32 of the 68 IXCs that failed to file a timely annual report. Of the other 36 IXCs, 17 had

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pending cancellations on file with the Commission and 19 had filed their annual report by February 9, 1989, the date of the second notice to the IXC's for their 1988 annual reports. Staff's reasoning behind this action was that it appeared that several of the IXC's had mailed the annual report prior to the January 31 deadline and staff's first letter did not state that the report must be received by the Division of Communications by January 31, 1989. Although implied in the rule, staff was concerned that it may have misled the IXC's of the importance of a timely filing.

In 1990, thirty (30) IXC's did not file their 1989 annual report by the January 31, 1990 deadline. Staff initiated show cause proceedings against 28 of the 30 companies. The other two companies had pending cancellations on file with the Commission.

In 1991, fourteen (14) IXC's did not file their 1990 annual report by the January 31, 1991 deadline. 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 4, 1991, staff sent a third notice of the filing requirements to the 11 IXC's that had still not filed their annual report. In this recommendation, staff has developed three categories listed below for recommending a show cause proceeding for failure to file the 1990 annual reports in a timely manner.

- 1) IXC's late 1 year.
- 2) IXC's late 2 years.
- 3) IXC's that did not file an annual report.

Staff has also attempted to be consistent with the Commission decision on fine amounts for companies filing late last year.

For category 1 IXC's, staff is recommending the Commission require the IXC's that filed their annual report late for 1990 to show cause why the respective IXC should not be fined an amount of \$2,000.

For the category 2 IXC (which did not pay their regulatory assessment fee by the January 30, 1991 deadline for the period of July 1, 1990 through December 31, 1990), staff is recommending the Commission require the IXC that filed its annual report late for two years (1987 and 1990) to show cause why the respective IXC should not be fined an amount of \$4,000.

For category 3 IXC's, staff is recommending the Commission issue a show cause order canceling the IXC's' certificates.

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It is apparent from the decrease in the number of late filings for 1990 that the fines assessed for the previous years have persuaded the IXCs to make a more conscious effort to comply with this rule. However, staff does not believe that the mere filing of the report is sufficient. Currently, staff is at the final and last step, with the last step being the filing of a ~~complete~~ report received by the Division of Communications by January 31, of each year. Also, in previous years staff has recommended initiating show cause proceedings on those companies that were violators of Commission Rule 25-24.480 for 2 or more years only if they were violators in consecutive years. However, this year staff believes that the Commission should take action on any company that has previously been notified by the Commission of violating this rule regardless of whether or not their violations were successive.

Staff has taken four years and considerable time to slowly implement this rule with the IXC industry. Staff believes it is time for the certificated IXCs to be responsible for their actions, or the lack thereof, whichever the case may be.

DISCUSSION OF ISSUES

ISSUE 1: Should the interexchange carriers (IXCs) listed on Attachment A be required to show cause why they should not be fined \$2,000 for failure to file the required 1990 annual report within the prescribed time limit which is in violation of Commission Rule 25-24.480 (Form PSC/CMU 38)?

RECOMMENDATION: Yes, the Commission should require the companies listed on Attachment A to show cause why they should not be fined \$2,000 for failure to comply with Commission Rule 25-24.480. If a company listed on Attachment A does not respond to the show cause or pay the assessed fine, staff recommends that the respective company's certificate should be canceled 30 days after the issuance of the show cause order, the assessed fine (if imposed) should be waived, and staff be authorized to administratively close the company's respective docket.

STAFF ANALYSIS: Commission Rule 25-24.480 (5) (Form PSC/CMU 38) requires all IXCs to file their annual reports with the Division of Communications by January 31 of each year. Staff notified the IXCs 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 4, 1991, staff sent out a third notice of the filing requirements to the eleven IXCs that had still not filed a 1990 annual report. Only three of the eleven companies submitted their annual report after the third notice was sent to them. It should also be noted that three companies had filed their annual report after the deadline but before the third notice was sent out.

Two companies listed on Attachment A, MTS Tampa and Sunforest Communication Group, have previously violated Commission Rule 25-24.480 in 1988, submitting their reports on February 1, 1989 and February 3, 1989, respectively. However, as stated earlier, 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. Therefore, staff is recommending these companies be considered first time offenders. The other three companies listed on Attachment A, Communication Catalyst Corporation, American Long Distance Company, and Affinity Network, Inc., are first time violators of Commission Rule 25-24.480 and were certificated in 1990. However, the three companies did receive two notices each before the due date.

Staff has attempted to be consistent with Commission decisions on fine amounts from previous years. Last year staff

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recommended that first time offenders (IXCs that were not fined in 1988) of Commission Rule 25-24.480 be required to show cause why they should not be fined an amount ranging from \$2,000 to \$4,000, based on the length of tardiness. For example, staff recommended that a company filing between February 1 and February 15, be required to show cause why they should not be fined \$2,000 for violation of Commission Rule 25-24.480.

Also, last year several companies that received their certificate in 1989 attended the April 1990 agenda conference and presented reasons why the Commission should recognize mitigating circumstances in setting the amounts of their fines. These companies pointed out that they had held their certificate for less than one year, and as a result, the 1989 report was the first ever submitted by the companies. Based on these arguments, the Commission voted to cut staff's recommended fines in half for these companies.

Staff believes that as long as a Company holds an IXC certificate, regardless of their certification date, it is the responsibility of that company to abide by Commission Rule 25-24.480 which requires IXCs to file their annual report with the Commission by January 31 of each year. The companies listed on Attachment A were made aware of this rule at the time they received their certificate or when the rule came into effect in 1987. In addition, they received two reminder notices.

Therefore, staff is recommending the Commission require the IXCs listed on Attachment A be required to show cause why they should not be fined \$2000 for violation of Commission Rule 25-24.480.

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ISSUE 2: Should T.H. Old Town Associates, Ltd. (T. H. Old Town) be required to show cause why they should not be fined \$4,000 for failure to file the required 1990 annual report within the prescribed time limit for the second time which is in violation of Commission Rule 25-24.480 (Form PSC/CNU 38)?

RECOMMENDATION: Yes, the Commission should require T.H. Old Town to show cause why they should not be fined \$4,000 for failure to file the required annual report within the prescribed time limit for the second time. If T. H. Old Town does not respond to the show cause or pay the assessed fine, staff recommends that the company's certificate should be canceled 30 days after the issuance of the show cause order, the assessed fine (if imposed) should be waived, and staff be authorized to administratively close the docket.

STAFF ANALYSIS: On February 4, 1991, staff sent out a third notice of the filing requirements to the eleven IXCs that had still not filed a 1990 annual report. T. H. Old Town responded to staff's third letter by filing its 1990 annual report on February 7, 1991, which is in violation of Commission Rule 25-24.480. After review of past annual reports submitted by the company, staff determined that T. H. Old Town did not file its 1987 report on time. The Company's history on filing the required report is shown on Attachment B. It should also be pointed out that this company has not filed their regulatory assessment fee for the second half of 1990 which was due by January 30, 1991.

In past years, the Commission has only penalized companies violating Commission Rule 25-24.480 for two or more years if their violations occurred in consecutive years. However, as mentioned earlier, staff believes that the Commission should take action on any company that has been previously notified by the Commission of violating this rule regardless of whether or not their violations were successive.

Staff believes that as long as a Company holds an IXC certificate it is the responsibility of that company to abide by Commission Rule 25-24.480 which requires IXCs to file their annual report with the Commission by January 31 of each year. All companies granted a certificate by this Commission are made aware of this rule at the time they receive their certificate. It is obvious that T. H. Old Town was aware of this rule given the fact that they were show caused in 1987 and paid a fine and the fact that they received two notices prior to this year's due date.

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Therefore, staff is recommending the Commission require T. H. Old Town be required to show cause why they should not be fined \$4,000 for violation of Commission Rule 25-24.480 for the second time.

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ISSUE 21 Should the IXC's on Attachment C be required to show cause why they should not have their certificate canceled for failure to file the required 1990 annual report which is in violation of Commission Rule 25-24.480?

RECOMMENDATION: Yes. Staff recommends the Commission cancel the certificates of each IXC on Attachment C for failure to file the required 1990 annual report which is in violation of Commission Rule 25-24.480. If a company listed on Attachment C does not respond to the show cause order, staff recommends that the respective company's certificate should be canceled 30 days after issuance of the show cause order. In addition, staff should be authorized to administratively close the company's respective docket.

STAFF ANALYSIS: On February 4, 1991 staff sent out a third notice to eleven IXC's that did not file their 1990 annual report. The third notice informed the IXC's that unless an annual report was submitted, possible cancellation of their certificate may be forthcoming. Only three companies submitted their annual report after the third notice was sent to them. Eight companies did not respond in any way to staff letters.

It should be noted that staff is recommending these companies be handled in the same manner as last year. Therefore, Staff believes it is appropriate for this Commission to show cause the Companies listed on Attachment C why their certificates should not be canceled.

LATE FILINGS

<u>Company</u>	<u>Docket Number</u>	<u>Fine Amount</u>	<u>Date Filed</u>	<u>Date Cert.</u>
1. MTS Tampa	910134-TI	\$2,000	02-01-91	06-25-86
2. Sunforest Comm. Group	910139-TI	2,000	02-01-91	09-14-87
3. Comm. Catalyst Corp.	910130-TI	2,000	02-04-91	07-31-90
4. Affinity Network, Inc.	910127-TI	2,000	02-12-91	08-03-90
5. American Long Distance	910128-TI	2,000	02-19-91	09-28-90

LATE FILINGS TWO YEARS

Company	Docket Number	Date Cert.	Date Filed	Prior Fine	Proposed Fine Amt.
T.H. Old Town	880387-TI	01-20-87	04-12-88	\$200	
			01-31-89		
			01-23-90		
	910138-TI		02-07-91		\$4000

No Response Received (Cancel Certificate)

<u>COMPANY</u>	<u>DOCKET NUMBER</u>
1. Card*Tel, Inc.	910129-TI
2. Excel Telecommunications, Inc.	910131-TI
3. Fox Communications Corporation	910132-TI
4. Long Distance Network Services, Inc. d/b/a Network Services	910133-TI
5. On Line Communications, Inc.	910135-TI
6. Payline Systems, Inc.	910136-TI
7. Telecom X Press, Inc.	910139-TI
8. Pentagon Computer Data, Ltd.	910147-TI