

FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed limitations by) DOCKET NO. 920192-TC
Florida Public Service Commission) ORDER NO. PSC-92-0412-FOF-TC
on solicitation by ADTEL COMMUNI-) ISSUED: 05/27/92
CATIONS, INC. after the caller)
makes a long distance carrier)
selection.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
BETTY EASLEY
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER TO DISCONTINUE USE OF INTERCEPT MESSAGE

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.

Adtel Communications, Inc. (ADTEL) has been a certificated pay telephone service (PATS) provider since May 30, 1990. As a certificated PATS provider, Adtel is subject to our jurisdiction.

On January 2, 1992, a complaint was filed alleging that end users attempting to access AT&T from pay telephone instruments operated by Adtel received an intercept message after dialing 102880+NPA NXX-XXXX. On January 2, staff notified Adtel that use of the intercept message potentially violated Rule 25-24.515(6), Florida Administrative Code, by placing an obstacle between the end user's selection of an interexchange carrier (IXC) and the transmission of the call to the selected IXC.

Adtel responded to staff's letter of January 2, 1992. Adtel took the position that the intercept message limited access to all locally available interexchange carriers in violation of Rule 25-24.515(6). Adtel also stated that in light of this position it would continue to use the intercept message.

Adtel has indicated that the intercept message in question is not played after an end user dials only 102880. In this case the next event heard is the AT&T brand. However, Adtel further indicated that after an end user dials 102880 and the destination

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numbers, the PATS instrument plays the pre-recorded message.

Based on the information before us at this time, the use of intercept messages during the network setup for the purpose of commercial advertising is potentially confusing to the consumer and inappropriate at this time.

Adtel experienced an increase in coin revenues since beginning use of the intercept message. However, Adtel also experienced an increase in revenue when stickers were placed on the pay telephones advertising the \$.25 per minute program with no verbal message. It is also likely that some of the increased revenue resulted from end users believing that 102880 access was inoperative when they heard the message beginning "Hang up..."

At present, the network setup time is approximately 6 seconds. This allows enough time to deliver the present message programmed by Adtel without delaying access to the selected IXC. However, as technology evolves and setup time decreases, Adtel will be discouraged from decreasing its setup time or else intentionally delaying connection to the selected IXC in order to allow its message to be heard. This form of advertising could well be expected to inhibit the application of new technology.

If this advertising is allowed to be used after the access code of a carrier is dialed, the effect could be technological pandemonium. Authority to advertise in this manner would be an invitation for the PATS provider to advise the end user of alternatives at every turn but the one desired by the PATS provider. The benefit of alternatives could easily be swallowed by consumer confusion and an excess of choices.

We recognize the need for, and the benefit of, competition. But competition must occur within the framework of regulation. Section 364.01(3)(a), Florida Statutes, compels us to "Protect the public health, safety, and welfare by ensuring that basic telecommunications services are available to all residents of the state at reasonable and affordable prices." By placing itself between an end user and the carrier of the end user's choice, Adtel's intercept message interferes with the availability of basic telecommunication service.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission, that Adtel Communications, Inc. shall cease using the intercept message

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between the last digit dialed by the end user and the connection with the interexchange carrier of the end users choice. It is further

ORDERED that any protest of this Order shall be filed pursuant to the requirements set forth below. It is further

ORDERED that if no protest is timely filed, this docket shall be closed at the end of the protest period.

By ORDER of the Florida Public Service Commission, this 27th day of May, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

JKA

by: Kay Hizon
Chief, Bureau of Records

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 June 17, 1992.

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.