

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of the Investigation of Customer)
Complaints and Compliance with Commission)
Administrative Rules by EXCEL)
TELECOMMUNICATIONS INC.)

DOCKET NO. 03-2214-01
NOTICE OF HEARING AND
ORDER TO SHOW CAUSE

ISSUED: February 11, 2003

By the Commission:

On January 2, 2003, the Division of Public Utilities ("Division") filed a Petition, pursuant to *Utah Code Annotated* §54-4a-1, for an Order to Show Cause why Excel Telecommunications Inc. ("Excel") should not be fined \$2,000 per day for each day that it has not been in compliance with Commission rules by failing to timely respond to informal customer complaints filed with the Division. The Division's petition contains allegations that Excel has, on at least two occasion, failed to timely respond to informal complaints. According to the Division one of the complaints had been open for almost 5 months at the time of the filing, with no adequate response from Excel. The Division's Petition sets forth good cause for an inquiry into whether Excel should be fined for failure to comply with Commission rules, and other actions taken in response to Excel's failure to timely respond to customer complaints filed with the Division. A copy of the Division's Petition is attached hereto, and incorporated by this reference. Whereas there appears to be good cause to support said allegations, the Commission enters the following order.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. EXCEL TELECOMMUNICATIONS INC. and its officers, shall appear before the Administrative Law Judge of the Commission on Tuesday, March 11, 2003, at 9:00 a.m., in the Fourth Floor Hearing Room #451, Heber M. Wells State Office building, 160 East 300 South, Salt Lake City, Utah, to show cause, if any, why Excel Telecommunications Inc. should not be fined, and other actions taken against Excel Telecommunications Inc., for its failing to comply with Commission rules, and timely respond to customer complaints.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify Julie Orchard, Commission Secretary, at 160 East 300 South, Salt Lake City, Utah, 84111, (801) 530-6713, at least three working days prior to the hearing.

DATED at Salt Lake City, Utah, this 11th day of February, 2003.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

ATTACHMENT**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Investigation of Customer	:	Docket No.
Complaints and Compliance with Commission	:	
Administrative Rules by Excel Telecommunications	:	Division Petition for Order to
Inc.	:	Show Cause

PETITION FOR AN ORDER TO SHOW CAUSE

January 2, 2003

Pursuant to Commission Rule R746-100-3, the Division of Public Utilities ("Division") hereby submits its petition for an Order to Show Cause against Excel Telecommunications Inc. ("Excel"). The Division petitions the Utah Public Service Commission ("Commission") pursuant to UCA § 54-4a-1, to open a docket for the purpose of requiring the officers of Excel to respond to informal consumer complaints filed with the Division in a timely manner and to show cause why Excel should not be fined \$2,000 per day for each day that it has not been in compliance with rules adopted by the Commission.

In support of the petition, the Division submits:

1. Pursuant to Commission Rule R746-240-7 ("Rule"), the Division has authority to investigate informal consumer complaints against telephone corporations operating in Utah, and to attempt to resolve such complaints. The referenced Rule requires telecommunications corporations to attempt to resolve informal complaints, absent unusual circumstances, within five business days. The Rule further states that "In no circumstance shall the telecommunications corporation fail to respond to the informal complaint within five business days." Finally, the Rule requires that "The telecommunications corporation shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days."
2. At this time, the Division has one open informal complaint against Excel for which the Division has not received any response. The Division e-mailed a copy of the complaint to Excel in accordance with the established procedures agreed upon by Excel and the Division. In this instance, the amount of time expired since the informal complaint was filed with the Division significantly exceeds the 30 day response requirement in the Rule (See Attachment # 1).
3. The open informal complaint by Alene Bell has been open in excess of 145 days. The Division received a complaint from Alene Bell against Excel on August 7, 2002, and forwarded the complaint to Excel at that time. On October 24, 2002, the Division notified Excel that failure to respond to the complaint within 10 business days could result in the Division pursuing sanctions against Excel (See Attachment # 2). In addition, Division records show that two telephone contacts were made with Excel representatives during November, 2002 by Rea Petersen from the Division to discuss the Company's response to the complaint (See Attachment # 3). To date, the Division has received no response from Excel regarding the Alene Bell complaint. On December 9, 2002, the Attorney General's office notified Excel that if the Division did not receive a response on or before December 27, 2002 to the Alene Bell complaint the Division would, without further notice, file a petition for an order to show cause for noncompliance with Commission rules (See Attachment # 4).
4. A few days prior to December 23, 2002, Tanya Edwards from Excel contacted the Assistant Attorney General representing the Division in this matter and requested another copy of the original complaint. The complaint and supporting letter from the complainant were faxed to Ms. Edwards on December 23, 2002, with an additional warning that failure to respond to the complaint would result in the Division filing a petition for an order to show cause against Excel (See Attachment # 5)
5. Not only did Excel fail to respond properly to the Alene Bell complaint as detailed above, but also during 2002 Excel ignored the Commission's requirement to respond to one of the other two informal complaints informal complaints within the required 30 day response requirement in the Commission Rules (See Attachment # 1). The

Company response to the informal complaint contained no justification for the excessive response time.

6. Pursuant to UCA § 54-7-25, any public utility that fails to comply with the statute, any rule or order issued by the Commission is subject to a penalty of not less than \$500 nor more than \$2,000 for each offense. The statute also states that "In the case of a continuing violation, each day's continuance of the violation shall be a separate and distinct offense." Under this statute, based upon the time taken by Excel to respond to the complaints filed with the Division during 2002, the Commission could justify sanctions against Excel of between \$63,500 and \$254,000 (See Attachment # 6)

Wherefore, the Division respectfully requests that the Commission open a docket for the purpose of requiring Excel and its officers to respond timely to informal consumer complaints filed with the Division and to show cause why penalties of \$63,500 or more (See Attachment # 6) should not be imposed upon the Company for failure to comply with the referenced Commission rules.

Dated this 2nd day of January, 2003.

Patricia E. Schmid
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