

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Excel Tele-
Communications, Inc. for a Certificate of)
Public Convenience and Necessity to Provide) Case No. 97-502-TP-ACE
Local Telecommunication Services.)

ENTRY

The Commission finds:

- (1) On June 2, 1997, the Office of Consumer's Counsel (OCC) and Edgemont Neighborhood Coalition (Edgemont) filed motions to intervene and requests for a hearing in the application of Excel Telecommunications, Inc. (Excel) to provide local telecommunication services.
- (2) Excel's application proceeded through the Commission's automatic approval process and was effective on July 5, 1997.
- (3) By Entry dated July 31, 1997, the Commission granted OCC's and Edgemont's motions to intervene and requests for a hearing.
- (4) On August 6, 1997, OCC filed an application for rehearing of the decision to automatically approve Excel's application. In support of the application for rehearing, OCC states that the grant of this application was in error in two respects. First, consideration of the application was not suspended, even though OCC and Edgemont had included in their motions to intervene statements of good cause why the application should not be granted and requests for an evidentiary hearing. Second, no hearing was held in this case. OCC notes that Section 4905.24, Revised Code, mandates a hearing be held whenever a provider of local exchange service wishes to serve the same municipal corporation or locality where another telephone company is already furnishing adequate services.
- (5) On August 18, 1997, Excel filed a memorandum contra OCC's application for rehearing. In the memorandum contra, Excel argues that OCC's application for rehearing was untimely and thus outside the jurisdiction of the Commission. Excel states that, pursuant to the Commission's Local Service Guidelines adopted in Case No. 95-845-TP-COI, Entry on Rehearing dated February 20, 1997, Excel's certification became effective July 5,

1997. Excel notes, however, that Section 4903.10, Revised Code, requires any person filing an application for rehearing to do so within 30 days after journalization of the Commission's order, which in this case would be the effective date of July 5, 1997. Excel further notes that the 30-day period in which to file an application for rehearing expired August 4, 1997, and that OCC's application for rehearing was filed on August 6, 1997.

Excel argues that, given the above circumstances, the Commission, by law, should not consider OCC's application for rehearing, nor should it schedule a new case which is, in effect, a rehearing. *Greer v. Public Utilities Commission*, 172 Ohio State 361 (1961). Moreover, Excel argues that the Commission does not have jurisdiction to entertain applications filed out of time. *City of Dover v. Public Utilities Commission of Ohio*, 126 Ohio State 438 (1933).

Finally, Excel argues that OCC's application for rehearing fails substantively because it raises no new issues, nor does it offer support for those allegations raised in its initial petition to intervene. Indeed, Excel argues that OCC does not dispute any portion of Excel's response to the initial intervention pleading.

- (6) On August 25, 1997, OCC filed a motion to suspend automatic approval *ex post facto*. OCC contends that the Commission has created confusion by scheduling the matter for hearing without determining if the proceeding is a certification or a revocation proceeding.
- (7) We believe that our earlier rulings granting intervention and a hearing were proper decisions under the circumstances presented in this case. In light of those decisions, we feel that OCC's request for a rehearing on the application is moot.

The Commission would observe that we granted the request for a hearing to consider the concerns raised by the intervenors, OCC and Edgemont, in their motions to intervene and requests for a hearing. A hearing in this case will go forward. After the hearing, in the event we conclude that the intervenors' concerns have merit, the Commission has the options of either attaching conditions to Excel's certificate or revoking it if necessary. Therefore, OCC's motion to suspend is denied.

- (8) The Commission further finds that no issues have been raised by the application for rehearing which were not raised by OCC and Edgemont in their motions to intervene and requests for a hearing. The application for rehearing therefore should be denied.

It is, therefore,

ORDERED, That the application for rehearing and the motion to suspend filed by OCC be denied. It is, further,

ORDERED, That a hearing go forward as set forth in Finding (6) and the July 31, 1997 entry in this matter. It is, further,

ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Ronda Hartman Fergus

David W. Johnson

Judith A. Jones

KKS/pdc