

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of FIBERLINK,)	DOCKET NO. 881231-TI
U.S.A., INC. for authority to provide)	
interexchange telecommunication)	ORDER NO. 20950
services.)	
<hr/>		ISSUED: 3-28-89

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTIONORDER DENYING CERTIFICATE

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 substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On September 23, 1988, Fiberlink USA, Inc. (Fiberlink) applied for authority to operate as an interexchange telephone company. The application listed Mr. Gregory Hoenig as president of Fiberlink. Mr. Hoenig previously applied for IXC authority under the name of Profit Concept Systems, Inc. (PCS) in Docket No. 861255-TI. In processing that application, it was discovered that PCS had operated for some time without certification in violation of Rule 25-24.470, Florida Administrative Code. We proposed in Order No. 17622 to grant PCS an IXC certificate, but also imposed a fine of \$16,916.88 for providing telecommunications service without a certificate. One-half of the fine (\$8,458.44) was suspended pending satisfaction of certain conditions in that order. PCS did not pay the fine and thus, was never issued an IXC certificate. At present, this docket is being transferred to the State of Florida Comptroller's Office for collection.

In addition, the Zwickel Group, Inc., filed a protest in Docket No. 861255-TI to the granting of a certificate to PCS. Allegations contained within the protest included lack of performance, misrepresentation and false advertising on the part of PCS.

The hearing scheduled as a result of the protest was subsequently cancelled when PCS was acquired by Florida Digital Network, Inc. (Fla. Digital) under adverse circumstances. Fla. Digital acquired PCS' stock, assets and customer base due to defaults in payments owed to Fla. Digital for interexchange transmission carrier service.

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DISCUSSION

We are charged with the task of insuring that companies certificated to provide telecommunications services for hire in Florida operate to the benefit of the general public. Mr. Gregory Hoenig's business relationship with PCS, the complaints received in the PCS docket, along with non-payment of the fine imposed in Docket No. 861255-TI, indicate that, as president of PCS, Mr. Hoenig demonstrated a propensity to neglect this Commission's rules and orders. Moreover, there is evidence of irresponsible dealings with customers and creditors of a telecommunications entity. This docket is not a revisitation of Docket No. 861255-TI, although we are concerned that, if the certificate is granted, Mr. Hoenig will have circumvented the payment of the Commission's imposed fine by simply obtaining certification in another name. However, we may, and do so here, view this prior conduct as indicative of Mr. Hoenig's fitness to operate a telecommunications company. We find, therefore, that it is not in the public interest to approve the application of Fiberlink.

In consideration of the above, it is

ORDERED by the Florida Public Service Commission that the application of Fiberlink USA, Inc., to provide interexchange telephone services is denied. It is further

ORDERED that this Order will become final on April 19, 1989, if there is no protest to this proposed agency action within the time frame set forth below.

By ORDER of the Florida Public Service Commission,
this 28th day of MARCH, 1989.


STEVE FRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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.

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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 April 18, 1989. In the absence of such a petition, this order shall become effective April 19, 1989 as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

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 April 19, 1989, 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 sewer 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.