

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of TELVUE)
CORPORATION for a certificate of public) DOCKET NO. 890498-TI
convenience and necessity authorizing) ORDER NO. 22528
operation as an interexchange telephone)
company in Florida) ISSUED: 2-12-90
_____)

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING IXC AUTHORITY

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.

On November 16, 1988, Telvue Corporation (Telvue) requested an exemption from Florida Statutes for interexchange carriers by informing the Commission of their plans to offer specialized, originating "800" service utilizing Telvue's assigned 885 NXX code to secure Feature Group 'D' facilities from the Local Exchange Carriers' (LECs') access tandems that accommodate Automatic Number Identification (ANI) functions. After examining the service proposed by Telvue our Staff believes that Telvue is a "telephone company" pursuant to Section 364.02, Florida Statutes, and that Telvue should obtain a certificate of public convenience and necessity prior to providing any telecommunications services in Florida.

On April 11, 1989, Telvue filed an application for authority to operate as an interexchange telephone company in Florida. The Company describes its proposed service as follows:

- 1) "Telvue will ultimately offer service universally to the entire State of Florida. The

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service consists of a telephone originated ordering service for Cable TV Programs. The serving areas are confined to the locations of the Cable TV Franchise that contract for the service. The facilities commonly utilized for the Telvue ordering service are Feature Group "D" trunks that accommodate Automatic Number Identification (ANI) functions."

2) "Telvue secures Feature Group 'D' Facilities from LEC's, terminated at Telvue's Point of Presence (POP). Using Telvue's 800-855 NPA-NXX code, subscriber traffic is routed to its POP. This call terminates at Telvue's equipment and information concerning each call is packeted and transmitted to a pre-specified service provider. Typically, the service provider is a Cable Television Provider, who desires this packeted information to accumulate requests for Cable TV Movie offerings. This CATV Service offering is called "Pay-Per-View", and the service Telvue provides is the ordering method CATV subscribers use to place an order. Subscribers are not billed or charged for the placement of the call by the LEC or Telvue."

Telvue states that it is currently operational without the necessity of certification in New Jersey, Illinois, Delaware, Virginia, Rhode Island and Massachusetts. The Company also states that it has received approval to operate as an intrastate interexchange telecommunication company from Michigan, Kentucky and Tennessee.

On May 24, 1989, Southern Bell Telephone and Telegraph Company filed a Petition to Intervene. Southern Bell argues that Telvue should not be certificated because the pay-per-view service does not constitute an interexchange carrier service nor does it constitute an interLATA service arrangement.

Southern Bell maintains, "that Telvue's service location is not really an interexchange carrier point of presence (POP) within a LATA that provides access into and out of an interexchange carrier's network. The Company argues that Telvue is a business location containing equipment used to provide an information service to cable TV companies. Because Telvue is not an IXC, Southern Bell further argues that Telvue cannot obtain FGD access facilities from its Access Tariff. We

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note that FGD service is limited to certificated IXCs. The Company also maintains that this type of service in not an enhanced service under the terms of its federal open network architecture (ONA) plan which sets forth the types of access, services and basic service elements (BSEs) that SBT is willing to offer. These service options will be provided subject to the screening criteria set forth in the Company's ONA plan. In order to accommodate Telvue's service needs, Southern Bell proposes to provide ANI pursuant to a Universal Access Number service. This service is not available at this time. The company claims that the special ANI service is more appropriate to Telvue than FGD.

In compliance with Chapter 25-24.490(3), Florida Administrative Code, Telvue states in its application that it will not collect any deposits or advance payments for more than one month in advance from customers in Florida. The Company attested to the accuracy of the information contained in the application and acknowledged receipt and understanding of the Florida Public Service Commission's Rules and Requirements relating to the provision of Interexchange telecommunications service in Florida.

Order Number 16804 requires interexchange telephone companies to notify the Commission and the affected LEC before it constructs facilities to bypass a local exchange company. Therefore, Telvue shall not bypass LEC facilities without first receiving express authority.

After having considered Telvue's application, it appears that Telvue may be a telephone company pursuant to Section 364.02 and Order No. 21815. In order to avoid further delay to Telvue in the provision of its services, we find it appropriate to grant Telvue a certificate to provide interexchange telecommunications services. This will enable Telvue to obtain the FGD facilities it needs in order to provide services. We are not fully convinced that Telvue should be classified as an IXC. We leave open this issue for further consideration. When Southern Bell files its proposed ANI service tariff that claims will meet Telvue's needs, we will readdress whether Telvue shall remain classified as an IXC.

Until we make a final determination of Telvue's status, its certificate will authorize it to operate as an interexchange telephone company providing long distance

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telecommunications service within the State of Florida. The authority will be statewide according to Commission statutes and rules and to the services identified in the applicant's tariff.

Upon review of Telvue's proposed tariff, we find it to be in compliance with the rules and regulations of the Commission. Therefore, we find that it should be approved. The effective date of the tariff shall be the effective date of its certificate.


Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Telvue Corporation's application for a certificate of public convenience and necessity to provide interexchange telecommunications services is granted as set forth in the body of this Order. It is further

ORDERED that Telvue's proposed tariff is approved as set forth in the body of this Order. It is further

ORDERED that this docket shall remain open to address Telvue's status as an interexchange carrier.

By ORDER of the Florida Public Service Commission, this 12th day of FEBRUARY, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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.

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 March 5, 1990.

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, 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 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 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.