

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for authority)	DOCKET NO. 900285-TI
to provide interexchange telecommuni-)	
cations service by THE HOGAN COMPANY)	ORDER NO. 23478
d/b/a INTERWATS)	
)	ISSUED: 9-13-90

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING CERTIFICATE AND
ACCEPTING SETTLEMENT OFFER AS CLARIFIED

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.

On February 26, 1990, our staff received information indicating that The Hogan Company d/b/a InterWATS (Hogan or the Company) was operating as an interexchange carrier (IXC) on an intrastate basis without first obtaining a certificate from this Commission. Rule 25-24.470, Florida Administrative Code, provides in pertinent part:

- (1) No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of the certificate, if granted.

. . .

After continuing correspondence between our staff and Hogan, we received a proposed tariff in the correct format on June 18, 1990, and a completed application on June 27, 1990. Staff then filed a recommendation for our August 21, 1990, Agenda Conference. While our staff recommended granting an IXC certificate to Hogan, our staff also recommended that we require Hogan to show cause why

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it should not be fined for its apparent violation of Rule 25-24.470.

On August 20, 1990, Hogan filed a written response to our staff's recommendation. Counsel for Hogan also appeared at our Agenda Conference to clarify the August 20th letter. Hogan states it had been under the impression that its regulatory affairs were being properly handled by a particular employee. Subsequently, Hogan terminated that particular employee and has been taking steps to come into compliance with Commission requirements, including certification. Hogan has offered to make a payment of \$1,200 in settlement of this matter. As clarified at the Agenda Conference, this settlement offer is being made in recognition of the fact that Hogan has operated without a certificate and that the Commission and staff have expended considerable resources in addressing the matter. The offer was not made as an admission of intent to violate Commission rules or regulations.

Having considered Hogan's application and proposed tariff, we find they meet our standard filing requirements. From Hogan's application, it appears the Company is technically capable of providing service. Therefore, we find that it is in the public interest to grant a certificate to Hogan, and it is our intention to grant the certificate. Interexchange carriers (IXCs) are subject to the provisions of Rules 25-24.455 through 25-24.495, Florida Administrative Code. Additionally, by Order No. 16804, IXCs are prohibited from constructing facilities to bypass a local exchange company without express prior approval from the Commission.

In addition, upon consideration of the facts and circumstances surrounding this particular case, we find it appropriate and reasonable to accept Hogan's settlement offer. Accordingly, Hogan shall submit its \$1,200 payment within twenty (20) days of the date of issuance of the consummating order in this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of The Hogan Company d/b/a InterWATS for a certificate to provide intrastate interexchange telecommunications service is granted as set forth in the body of this Order. It is further

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ORDERED that the offer of settlement submitted by The Hogan Company d/b/a InterWATS is hereby accepted as set forth in the body of this Order. It is further

ORDERED that the effective date of our action herein is the first working day following the date specified below, if there is no protest to the proposed agency action within the time frame set forth below. It is further

ORDERED that The Hogan Company d/b/a InterWATS shall submit its payment of \$1,200 to this Commission within twenty (20) days of the date of issuance of the consummating order in this docket.

By ORDER of the Florida Public Service Commission, this 13th day of SEPTEMBER, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ABG

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

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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 October 4, 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.