

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against NATIONAL COMMUNICATIONS NETWORK for violation of Rule 25-24.470, F.A.C., certificate of public convenience and necessity required)	DOCKET NO. 891276-TI
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In re: Initiation of show cause proceedings against ATS COMMUNICATIONS, INC. for violation of Rule 25-24.470, F.A.C., certificate of public convenience and necessity required)	DOCKET NO. 891277-TI
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In re: Application of NCN COMMUNICATIONS, INC. for a certificate of public convenience and necessity authorizing operation as an inter-exchange telephone company in Florida))	DOCKET NO. 900076-TI
)	ORDER NO. 23773
)	ISSUED: 11-16-90

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
GERALD L. GUNTER

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING IXC CERTIFICATE SUBJECT TO CERTAIN TERMS
AND
ORDER RESOLVING SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission that the action discussed herein granting an interexchange carrier certificate to NCN Communications, Inc., 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.

By Order No. 22561, issued February 15, 1990, we ordered National Communications Network (NCN) to show cause in writing why it should not be fined \$5,000 for operating as an interexchange carrier (IXC) within the State of Florida without the certificate of public necessity and convenience required by Section 364.33, Florida Statutes, and Rule 25-24.470, Florida Administrative Code. We also denied NCN's application for an interexchange carrier (IXC)

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certificate in Order No. 22558, issued February 15, 1990. Our decision was based on NCN's failure to file a complete application, and the numerous consumer complaints we had received regarding the company's sales techniques.

Concurrent with those decisions, we issued Order No. 22543 on February 13, 1990, requesting ATS Communications, Inc. (ATS), to show cause in writing why it should not be fined \$5,000 for violation of Section 364.33 and Rule 25-24.470. ATS is a marketing subsidiary of NCN that sells NCN services.

On February 2, 1990, NCN filed a complete application for an IXC certificate. However, by Order No. 23475, issued September 12, 1990, we set the matter of NCN's application for an IXC certificate for hearing due to the number of consumer complaints. On September 18, 1990, we received a proposed settlement offer from NCN. At our November 6, 1990 Agenda Conference we voted to grant NCN an IXC certificate subject to certain terms and conditions.

First, we requested that NCN update the information in its application so that it accurately reflects the current corporate officers; we received that information on November 7, 1990. After having considered the application update and tariff, it appears that NCN is technically capable of providing service. In addition, we requested that the Chairman and CEO of NCN sign a statement agreeing to all terms and conditions of the settlement offer. On November 7, 1990, we received correspondence from the Chairman of the Board and Chief Executive Officer of NCN, agreeing to the following terms:

1. NCN acknowledges that it is a telephone company within the definition set out in Section 364.02, Florida Statutes, and that it initially undertook to provide intrastate service without authority.
2. NCN will not offer telephone service in the name of ATS. ATS is solely a marketing subsidiary within NCN that will sell NCN services. Forms previously in use by the company have already been discontinued, and any marketing undertaken by the NCN organization will clearly indicate NCN services as is detailed below.

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3. NCN will market its services in accordance with its tariff, and will assure that all agents and representatives act in accordance with that tariff.
4. In addition to paragraph 3 above, all marketing of NCN services will be pursuant to the following terms and conditions, which NCN believes will ensure proper control over its marketing agents so that its services will not be misrepresented to the public.
 - a. Representatives will be required to fully identify themselves to prospective customers.
 - b. Representatives will be required to affirmatively indicate that they represent NCN for purposes of soliciting customers to NCN's long distance telephone service.
 - c. (1) Representatives will be required to obtain written authorization from each customer pursuant to the attached form which has two parts, the second copy of which will be retained by the customer. This form also provides basic information regarding NCN and its services so that the customers will be able to make an informed decision.

(2) An NCN representative will call each new customer within 30 days of the subscription date to verify the authorization.

(3) In the event that a conversion to NCN occurs without proper customer authorization, NCN will reimburse that customer for all charges incurred.
 - d. NCN will modify its marketing materials and representative training to properly inform agents and representatives regarding applicable Commission rules, correct use of the new forms, and the need for informed customer authorizations.
 - e. Failure to abide by operating requirements will result in a marketing representative's dismissal from the program.

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5. NCN will not require the use of or solicit credit card number information on customer request forms.
6. NCN acknowledges that failure to comply with the Commission's rules, orders, and applicable Florida law, will result in decertification.
7. NCN will be subject to periodic evaluations by the Commission Staff to determine compliance with Commission rules and the company's tariff, and will produce in Tallahassee such records as may be required.
8. NCN will pay a fine of \$20,000, payable within 10 days of the Commission's acceptance of this agreement, as part of the settlement of the issues in these dockets.
9. Upon the Commission's acceptance of these terms and conditions, and following receipt of the \$20,000 fine, an order will be issued granting the requested interexchange carrier certificate, approving the tariff, and canceling the hearings previously scheduled.

It should be noted that we are aware that negotiations are currently underway which would result in a change in the ownership of NCN. We remind the Company that such transactions must be made in accordance with Rules 25-24.472 and 25-24.473, and such other rules or statutes that may apply.

Although we have received complaints concerning NCN's marketing practices, we believe that, because NCN does have a number of satisfied customers, we should give this company an opportunity to perform in a manner that is in the public interest. However, we do so only under the strict conditions which we have set forth herein.

Because NCN has agreed to the above conditions, and has provided us with an application and tariff which meet our requirements for certification, we find that it is in the public interest to grant a certificate to NCN at this time.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that the application of NCN Communications, Inc. for a certificate to provide intrastate interexchange telecommunications service is granted subject to the terms and conditions set forth in the body of this order. It is further

ORDERED that, if there is no protest to the proposed agency action within the time frame set forth below, the certificate shall be effective as set forth in the Notice of Further Proceedings below. It is further

ORDERED that acceptance of the settlement offer as set forth in the body of this order shall constitute a final disposition of the pending show cause proceedings against NCN Communications, Inc., and its affiliate, ATS Communications, Inc. It is further

ORDERED that because our action in the show cause dockets is final, Dockets Nos. 891276-TI and 891277-TI are closed. However, Docket No. 900076-TI shall be closed upon expiration of the protest period, provided no protest is received.

By ORDER of the Florida Public Service Commission, this 16th
day of NOVEMBER, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

PAK

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

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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.

As identified in the body of this order, our action granting the interexchange certificate 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 December 10, 1990. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 the relevant portion of 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of

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Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance 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.