

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Amendment of)	DOCKET NO. 900858-TP
Rule 25-24.470(1), F.A.C., and)	
initiation of proposed Rules)	ORDER NO. 23879
25-24.470(2) and 25-24.470(3),)	
F.A.C., regarding telecommunications)	ISSUED: 12-13-90
services to the transient public,)	
by HF Communications Corporation.)	
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL WILSON, Chairman
 BETTY EASLEY
 GERALD GUNTER
 FRANK S. MESSERSMITH

ORDER DENYING PETITION FOR RULEMAKING

BY THE COMMISSION:

BACKGROUND

On October 23, 1990, HF Communications Corporation (HFCC) filed a Petition for Rulemaking in which it asked the Commission to initiate rulemaking to amend Rule 25-24.470, F.A.C., to implement recent changes to Chapter 364, Florida Statutes, and to adopt as a formal rule the so-called "transient exemption," i.e., the historic exemption from the requirement of certification for those persons who provide telecommunication services solely to members of the transient public.

At the November 20, 1990, Agenda Conference the Commission voted to deny the Petition for Rulemaking. In the same item at Agenda, the Commission also decided not to take any action at this time on staff's recommendation that the Commission require call aggregators to be certificated as interexchange carriers (IXCs), where the aggregator offers automated billing and operator services directly to its guests. Finally, the Commission approved closing the docket after the order was issued.

REASONS FOR DENIAL OF PETITION

HFCC's petition proposes that Rule 25-24.470, Certificate of Public Convenience and Necessity Required, be amended to read as follows:

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(1) No person shall provide intrastate interexchange telecommunications 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 a certificate, if granted. However, acquisition of equipment and facilities, advertising and other promotional activities may begin prior to the effective date of the certificate at the applicant's risk that it may not be granted. In any customer contacts or advertisements prior to certification, the applicant must advise the customer that certification has not and may never be granted.

(2) No person shall provide operator services as defined in s. 364.02 without first obtaining from the Commission a certificate of public convenience and necessity as either an operator services provider or an interexchange telecommunications services provider or an interexchange company.

(3) The requirement of certification in (1) and (2) above does not apply to a person who provides interexchange telecommunications or operator services to members of the transient public as an ancillary but necessary part of its primary business of serving the transient public.

Subsection (2) is identical to the language in Florida Statute 364.3376(1)(a). The question is whether there is a need to add this new statutory language to the existing rules. The statute clearly requires that persons providing operator services must obtain a certificate of public convenience and necessity. Operator services providers, other than the local exchange telecommunications companies, do in fact provide intrastate interexchange telecommunications services. Therefore, existing subsection (1) of the rule already requires these companies to be certificated. We find that it is not necessary to add subsection (2) because subsection (1) is adequate to carry out the intent of the statute.

Subsection (3) would exempt companies that provide interexchange telecommunications or operator services to members of the of the transient public, as an ancillary but necessary part of its primary business of serving the transient public, from the certification requirements of subsection (1). Although this has been done in certain cases in the past, under the so called "transient exemption", we find that including such a blanket exemption in the rules would be contrary to the statutory intent that operator services providers be certificated. This issue has become particularly relevant now that technology has made it possible for one company to be in the primary business of serving the transient public, yet at the same be both a call aggregator and an operator services provider. For these reasons, we find that the

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transient exemption issues are still developing and are not yet ripe for any rulemaking at this time.

We decline to take action at this time on the question of whether call aggregators that provide automated billing and operator services directly to its guests must be certificated as IXC's. This should be taken up in a workshop that addresses the operations of new technologies such as "store and forward" and "operator in a box" and explores how to deal with these technologies in a regulatory context.

It is, therefore,

ORDERED by the Florida Public Service Commission, that HF Communications Corporation's Petition for Rulemaking be denied. It is further

ORDERED that this docket be closed.

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

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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by: Kay Flynn
Chief, Bureau of Records

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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.

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 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.