

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of STOREFINDER, INC.) DOCKET NO. 900823-TI
 for a certificate of public convenience)
 and necessity authorizing operation as an) ORDER NO. 24386
 interexchange telephone company in Florida)
 _____) ISSUED: 4/18/91

The following Commissioners participated in the disposition of this matter:

- THOMAS M. BEARD, Chairman
- J. TERRY DEASON
- GERALD L. GUNTER
- MICHAEL MCK. WILSON

ORDER DENYING IXC CERTIFICATE
AND APPROVING EXPERIMENTAL OFFERING

BY THE COMMISSION:

I. Background

On October 10, 1990, Storefinder, Inc. (Storefinder or the Company) filed an application for an interexchange telephone company (IXC) certificate. Storefinder is a wholly-owned subsidiary of Dominos Pizza, Inc. (Dominos). The application was prompted by Dominos' discussions with several Local Exchange Companies (LECs) regarding Dominos' desire to establish a new type of service. Dominos' basic goal is to obtain a single local seven-digit phone number nationwide to reach the nearest Dominos Pizza store. Dominos formed Storefinder to market the nationwide, single number, store locator service to other unaffiliated businesses.

The precise service that Storefinder wishes to provide, and where the Company wishes to provide that service, has changed over time as the Storefinder plan has evolved. Currently, Storefinder envisions two things: 1) a nationwide local number (seven digit dialing), which it can use in every part of the country to market Dominos Pizza, and 2) Automatic Number Identification (ANI), which it can use to route calls through its central answering place to the appropriate neighborhood Dominos store. Storefinder has stated its willingness to comply with whatever restrictions this Commission places on it in order to obtain the service it desires.

II. Introduction

As with many advancements in the application of telecommunications technology, the service that Storefinder wishes to provide does not fit easily within the established regulatory

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framework. While the elements required to provide the service are not unique, Storefinder's combination and application of these elements is. The proposal involves certain regulatory restrictions on the availability of a universal local seven digit telephone number and the delivery of ANI information. In addition, the proposal raises a question of whether, and to whom, Storefinder may be allowed to provide the store locator service. Notwithstanding the questions raised, Storefinder's proposed store locator service is a significant new service that appears to have some desirable benefits to the public.

The store locator service may significantly facilitate the delivery of goods and services to consumers through the use of a universal local number access. We believe that this potential benefit warrants allowing Storefinder to provide its proposed service on an experimental basis. However, even if the potential benefits come to fruition, we must still balance them against the desirability of eliminating some of the current user restrictions in the Local Exchange Companies' access tariffs. Additionally, since we have not completed our determinations regarding the delivery of ANI data to end users, our ultimate policy on this issue may require alteration, or termination, of the Storefinder experiment.

As discussed in detail below, we have determined that certification of Storefinder as an IXC is inappropriate. We have also determined that Storefinder should be allowed to provide its proposed service to Dominos as an experiment. In conjunction with the experiment, we have granted certain waivers to enable Storefinder to obtain some of the services it needs in order to provide its service. We have also directed the affected LECs to provide the requisite services to Storefinder. We have further directed that both the LECs and Storefinder compile certain data and report it to us for evaluation of the experiment.

III. The Experiment

A. Access Tariff Waivers

The only service currently available that satisfies Dominos' desire for a nationwide local number is Feature Group B Access Service (FGB). With FGB, the use of a "950" prefix allows seven

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digit dialing using the same number to reach an entity on a local basis everywhere in the country.

In Florida, both ANI and FGB may be purchased only from the LECs' access tariffs. The current access tariffs contain a user restriction which precludes a person from purchasing access services unless that person has a certificate of public convenience and necessity to provide interexchange telecommunications service. This restriction exists for two purposes: first, to enable the Commission to track who is providing telephone service for hire; second, to prevent end users from avoiding paying toll charges. It was this user restriction that prompted Storefinder's IXC application.

Under the instant Storefinder proposal (as compared to Dominos' ultimate goal of a single Dominos number nationwide), a customer would dial a seven digit phone number to Dominos. Everywhere within the Orlando and Jacksonville LATAs, that phone number would be the same (950-XXXX). The call would be routed over FGB access facilities to Storefinder's central routing point (the equivalent of the IXC point of presence). At the central routing point would be an AT&T Digital Link Splicer which matches the calling customer's ANI with the phone number of the Dominos store nearest to that customer. The call would be sent from there to the appropriate Dominos store over FGB trunks. The ANI would be dropped at the central routing point. Thus, the ANI would not go to the individual Dominos store. No other information, such as customer name or favorite pizza, would be attached to the call. While attachment of this type of information is a consideration for the future, it will not be allowed during the experiment.

As discussed above, the current user restrictions in the access services tariff require that a company be certificated as an IXC in order to purchase service from that tariff. We find that, in order to accomplish this experiment, it is appropriate to grant Storefinder a waiver of the certification requirement in the access tariffs of United Telephone Company of Florida (United) and Southern Bell Telephone and Telegraph Company (Southern Bell). Southern Bell and United shall develop an experimental special assembly (a marketing trial) for a period of one year (or less if mutually agreed upon by the two LECs, our staff, and Storefinder) to be offered to Storefinder.

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The experiment shall include the provision of 950 access with automatic number identification (ANI) from ANI-capable end offices in the Jacksonville and Orlando LATAs. 950 access with ANI is currently available in section E6.2.2b of the intrastate access tariff. To limit the extent of the experiment, Storefinder shall be allowed to use this service only for Dominos stores and shall not be allowed to provide it to others. The ANI shall be used only for routing the call after it gets to Storefinder's central routing point. The ANI information shall not be transported beyond the central routing point. The Feature Group B minutes of use will be 100 percent intrastate. The service is not intended to be used as a toll replacement service; by that we mean that the total call, from the customer to the individual Dominos store, will be local. During the experiment, we shall require the LECs involved to document minutes of use and Storefinder to document the volume of calls and the extent to which any non-local calls occur.

B. Local Service Issue

Storefinder's initial proposal to provide the "store locator" service through the routing of calls to unaffiliated entities constitutes the provision of telecommunications service to the public for hire. However, since at least some of the calls would be local, Storefinder would be in violation of Section 364.335, Florida Statutes. Section 364.335 provides in part that:

The Commission may not grant a certificate for a proposed telecommunications company, or for the extension of an existing telecommunications company, which will be in competition with or duplicate the local exchange services provided by any other telecommunications company

Because this statutory language precludes the provision of local exchange service by other than the current certificated LEC, certification of Storefinder as an IXC providing the store locator service to other unaffiliated entities is inappropriate. Therefore, we will not grant an IXC certificate to Storefinder.

A related concern is whether the provision of this service by Storefinder to the individual Dominos franchise owners also violates the provision of Section 364.335. While Storefinder is wholly owned by Dominos, each Dominos store is owned by a Dominos franchisee. Dominos has no direct ownership interest in the individual franchise stores.

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We have previously determined that communication within an entity or between affiliated entities is not telecommunications service "to the public for hire" as described in Section 364.02(7 and 8), Florida Statutes. Hence, no certification from the Commission is required. We have defined "affiliated entities" as an ownership interest in one entity by another of 50% plus one share. Thus, under this definition, Dominos franchises are affiliated with neither Storefinder nor Dominos. However, there are certain features of Dominos' situation which distinguish it from the usual. The specific nature of the franchise agreement leaves only the actual ownership of the franchise in the hands of the franchisee. Virtually all other aspects of the operations of the franchise are strictly controlled by Dominos. Such circumstances make the franchises appear to be direct affiliates of Dominos. More importantly, the traffic carried by Storefinder to the individual Dominos stores will be one-way only. Storefinder will not route traffic originating at the franchises. Such traffic will be sent directly to a LEC for local termination or to an IXC for interexchange termination. Under these specific circumstances we will treat the distribution of originating traffic by Storefinder to the Dominos franchises as internal traffic among affiliates.

C. Reporting Requirements

In order to evaluate the results of the experiment, we find it appropriate to require Storefinder, Southern Bell and United to compile certain data and report to us on the results of the experiment. As stated above, the Feature Group B minutes of use will be 100 percent intrastate. United and Southern Bell shall each document the total minutes of use by month. Storefinder shall document the total volume of calls by month, the number of calls routed by Storefinder and the extent to which any non-local calls occur. Storefinder, Southern Bell and United shall report on their experiences with the service including its success, failures and need for change. All reports shall be filed within 30 days after nine months from the date of this Order.

D. Conclusion

As discussed above, we will allow this experiment to go forward under certain conditions. However, three other issues are cause for concern. The first is that we are expressly limiting the terms and conditions of this experiment solely to Storefinder.

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Since this is an experiment, it is not our intent that our decisions here serve as an endorsement of the proliferation of this service. Anyone seeking the same service as Storefinder must sufficiently, and independently, justify the need and desirability of the service to warrant a separate experiment.

We are concerned that Storefinder has (or will have) made an investment in equipment and advertising that, at the end of the experimental period, may not be usable in Florida. Storefinder recognizes this risk and accepts it. The loss of investment shall not constitute sufficient grounds for continuing the experiment or making it a permanent offering. For the limited purposes of this experiment we are willing to treat Storefinder, Dominos, and the individual Dominos stores as a unified Dominos family. However, the relationship between Storefinder, its parent corporation Dominos, and the independently owned Dominos franchise stores could make the current arrangement untenable. By that we mean that this arrangement could ultimately be construed as Storefinder selling local service to individual stores through the stores' franchise fees in a situation which is somewhat analogous to a building owner selling telephone service to its tenants through the collection of rents in the shared tenant services context. As the service is primarily local, offering it to unaffiliated entities is problematic. Storefinder shall also be subject to our ultimate decision on the delivery of ANI to end users. Thus, it may be that we ultimately determine that this hybrid service, utilizing IXC tariff offerings and ANI, offered in the way presented by this experiment, runs afoul of our rules and will not be allowed. Storefinder recognizes this and accepts the potential risk to its investment.

It appears to be in the public interest to let this experiment go forward even though the way in which it may eventually be offered to the broader public, beyond the pizza connoisseurs of the Jacksonville and Orlando LATAs, may be different than that presented by the Storefinder/Dominos organization. We shall continue to investigate the offering of various types of access to information providers and others.

Therefore, based upon the foregoing it is

ORDERED by the Florida Public Service Commission that Storefinder, Inc. shall not be granted a certificate as an IXC as set forth in the body of this Order. It is further

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ORDERED that Southern Bell Telephone and Telegraph Company and United Telephone Company of Florida shall provide 950 Feature Group B access service with automatic number identification to Storefinder in the Jacksonville LATA and the Orlando LATA on an experimental basis. It is further

ORDERED that the experiment shall be for a period of one year, or less if mutually agreed upon by Southern Bell Telephone and Telegraph Company, United Telephone Company of Florida, our Staff, and Storefinder. It is further

ORDERED that Storefinder shall follow the guidelines set forth in the body of this Order. It is further

ORDERED that Storefinder is granted a waiver of the certification requirements in Southern Bell Telephone and Telegraph Company's and United Telephone Company of Florida's access tariffs as set forth in the body of this Order. It is further

ORDERED that the access tariff offerings which Storefinder is herein allowed to utilize in this experiment shall not be employed in any context but the provisioning of the store locator service discussed in the body of this Order. It is further

ORDERED that Storefinder shall report monthly data on the total volume of calls and the number of toll calls which are routed by Storefinder. It is further

ORDERED that Southern Bell Telephone and Telegraph Company and United Telephone Company of Florida shall report the minutes of use data as set forth in the body of the Order. It is further


ORDERED that Storefinder, Southern Bell Telephone and Telegraph Company, and United Telephone Company of Florida shall report on their experiences with the service including its success, failures and need for change. It is further

ORDERED that all reports required herein shall be filed within 30 days after nine months from the date of this Order. It is further

ORDERED that this docket shall remain open for the period of the experiment.

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By ORDER of the Florida Public Service Commission, this
18th day of APRIL, 1991.



STEVE TRIBBLE, 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.

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.