

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate) DOCKET NO. 920106-TI
to provide interexchange tele-) ORDER NO. PSC-92-0695-FOF-TI
communications services by FIRST) ISSUED: 07/22/92
NETWORK SYSTEMS INTERNATIONAL, INC.)
a/k/a FIRST NET.)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

**NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING CERTIFICATE**

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 February 6, 1992, First Network Systems International, Inc. d/b/a First Net (FNSI) filed an application for a certificate to operate as an interexchange telephone company in Florida. Rule 25-24.471, Florida Administrative Code, provides that a certificate will be granted if the Commission determines that such approval is in the public interest.

FNSI states in its application that no regulatory penalties have ever been imposed nor has FNSI ever been denied authority to operate as an interexchange carrier. This is true for FNSI, however, this is not true for Mr. Gregory Hoenig, an officer for FNSI and an officer in another company that filed for certification as an interexchange telecommunication company with this Commission in 1986 under the corporate name of Profit Concept Systems, Inc.

Commission records reveal that, on September 19, 1986, Mr. Gregory Hoenig filed an application for certification under the corporate name of Profit Concept Systems, Inc. (Docket No. 861255-TI). After an investigation, Profit Concept Systems, Inc. was found in violation of Commission Rule 25-24.470, and Section 364.33, Florida Statutes, for providing intrastate long distance telephone service without a certificate. In that docket, we imposed a fine of \$16,916.87 on Profit Concept Systems, Inc. (Order No. 17622). Profit Concept Systems, Inc. was never granted an IXC

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certificate due to its failure to comply with the terms of Order No. 17622.

After reasonable efforts to communicate with Profit Concept Systems, Inc. to collect the outstanding fine, the Commission found it appropriate to declare the \$16,916.87 fine assessed against Profit Concept Systems, Inc. uncollectible (Order No. 21170). On May 19, 1989, we received verification from the Comptroller's Office, Department of Banking and Finance, concurring in finding this to be an uncollectible debt and giving our agency permission to write off this debt. On May 25, 1989, a request was sent to the Division of Records and Reporting to close Docket No. 861255-TI.

Based on the foregoing, staff recommended in the instant docket that certification of First Network Systems International, Inc. d/b/a First Net is not in the public interest and the application should be denied. At the Agenda Conference on May 5, 1992, with four Commissioners participating, the vote was a 2-2 split which necessitated a tie-breaking vote. However, based on representations made by Mr. Hoenig at the May 5, 1992 Agenda Conference, staff found it necessary to prepare a recommendation incorporating new information which addressed the accuracy of Mr. Hoenig's statements. For this reason, a new vote by the full Commission was taken at the June 30, 1992 Agenda Conference.

Mr. Gregory Hoenig asserted at the May 5, 1992 Agenda Conference that although he was President of Profit Concept Systems, Inc., he was only a minor stockholder in the Company and should not be held accountable for the actions of Profit Concept Systems, Inc. However, in a letter addressed to Jose Martinez of the Commission staff, Mr. Hoenig, on behalf of Profit Concept Systems, Inc., stated "Please accept my application for the interexchange service certification, as the Corporation's C.E.O. and principle stockholder..." We find that the actions of Profit Concept Systems, Inc., a Company for which Mr. Hoenig stated in 1986 to this Commission that he was both the President and principle stockholder, must be considered in determining whether to approve or deny the application of First Network Systems International, Inc. d/b/a First Net.

Furthermore, on September 23, 1988, Fiberlink USA, Inc. applied for authority to operate as an interexchange telephone company. (Docket No. 881231-TI). After reviewing the application of Fiberlink USA, Inc., staff realized that the President of Fiberlink USA, Inc. was Mr. Gregory Hoenig. In its recommendation to the Commission denying the application of Fiberlink USA, Inc., staff concluded that

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... as President of Profit Concept Systems, Inc., Mr. Hoenig demonstrated a propensity to neglect this Commission's rules and orders. Moreover, there is evidence of irresponsible dealings with customers and creditors of a telecommunications entity. We recommend, therefore, that it is not in the public interest to approve the application of Fiberlink USA, Inc. Furthermore if the certificate is granted, Mr. Hoenig will have circumvented the payment of the Commission's imposed fine by simply obtaining certification in another name.

In that docket, we concurred in staff's recommendation and the request for a certificate was denied in PAA Order No. 20950 issued March 28, 1989. After the protest period had expired, the docket was closed on April 20, 1989, by Order No. 21082.

Moreover, we note that in another docket, Mr. Gregory Hoenig failed to file annual reports as required, resulting in cancellation of Pay Telephone Certificate No. 447, that had been granted under his name, contrary to Mr. Hoenig's statements at the May 5, 1992, Agenda Conference.

In light of the foregoing, we find that granting a certificate to operate as an interexchange telephone company in Florida to First Network Systems International, Inc. d/b/a First Net is not in the public interest and conclude that the application is denied.

It is, therefore,

ORDERED by the Florida Public Service Commission that the application of First Network Systems International, Inc. d/b/a First Net for a certificate to provide interexchange telecommunications service is denied. It is further

ORDERED that this docket shall be closed if no protest is filed in accordance with the requirements set forth below.

By ORDER of the Florida Public Service Commission this 22nd day of July, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(SEAL)
JRW

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 August 12, 1992.

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.

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 wastewater 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.