

MEMORANDUM

April 9, 1998

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TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PEÑA) *KP MCB*

RE: DOCKET NO. 971163-TI - APPLICATION FOR CERTIFICATE TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICE BY COMMUNICATION OPPORTUNITY, INC.

PSC-98-0496-SC-TI

Attached is an ORDER TO SHOW CAUSE AND NOTICE OF PROPOSED AGENCY ACTION ORDER DENYING CERTIFICATE TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICE AND REQUIRING TELECOMMUNICATIONS PROVIDERS TO DENY OR DISCONTINUE SERVICE, to be issued in the above referenced docket. (Number of pages in order - 8)

KMP/anr
Attachment
cc: Division of Communications
I: 971163.kmp

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
certificate to provide
interexchange telecommunications
service by Communication
Opportunity, Inc.

DOCKET NO. 971163-TI
ORDER NO. PSC-98-0496-SC-TI
ISSUED: April 10, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING CERTIFICATE TO PROVIDE INTEREXCHANGE
TELECOMMUNICATIONS SERVICE AND REQUIRING
TELECOMMUNICATIONS PROVIDERS TO DENY OR DISCONTINUE SERVICE
AND
ORDER TO SHOW CAUSE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein relative to certification and discontinuation or denial of interexchange telecommunication services are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Recently, we became aware that Communication Opportunity, Inc. (COI) apparently provided debit card services without having obtained a certificate of public convenience and necessity from this Commission. On June 12, 1997, our staff sent a certified letter to COI requesting information to help determine if certification was, in fact, necessary. COI responded to our staff's letter on June 16, 1997. In its response, COI informed us that there are companies who provide 800 service directly into COI's facilities, that COI receives a bill for the usage of the 800 service, and that COI issues PIN numbers. Based on the response,

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FPS TELEPHONE RECORDING

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on June 18, 1997, our staff mailed an application for a certificate to provide interexchange telecommunications (IXC) service to COI.

On September 3, 1997, COI filed its application to provide IXC service in Florida. Our Division of Communications' staff contacted COI and its representatives on numerous occasions requesting the Secretary of State filing and a corrected tariff. As of March 24, 1998, the date of our Agenda Conference at which we considered this matter, neither had been received.

DENIAL OF CERTIFICATE

Rule 25-24.471, Florida Administrative Code, Application for Certificate, states in part:

(1) An applicant desiring to apply for a certificate shall submit an application on Commission Form PSC/CMU 31 (12/96), which is incorporated into this rule by reference.

Commission staff provided COI an application packet that contained the application form, a sample tariff, a check list for IXC tariffs, an IXC information brochure, IXC Rules, and telecommunications tax information from the Florida Department of Revenue.

Item 9 on page 4 of the application states, "If incorporated, please give: (a) proof from the Florida Secretary of State that the applicant has authority to operate in Florida." As of March 24, 1998, COI has not provided the Commission with a copy of the Secretary of State information. In addition, the tariff that was submitted was not complete. Therefore, since COI has failed to comply with the requirements of Rule 25-24.471, Florida Administrative Code, we find that it is not in the public interest to grant a certificate to provide interexchange telecommunications service to COI.

TELECOMMUNICATIONS PROVIDERS TO DENY OR DISCONTINUE SERVICE

Rule 25-24.4701 (3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited, states:

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(3) The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

In view of the fact that COI is apparently providing service in Florida without a certificate, all certificated interexchange providers in the State of Florida are hereby instructed to deny or discontinue service to COI, pursuant to Rule 25-24.4701(3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited.

SHOW CAUSE

Based on the evidence available, it appears that COI has violated Rule 25-24.470, Florida Administrative Code, by offering telecommunications service without a certificate.

Rule 25-24.470, Florida Administrative Code, states:

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 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

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customer that certification has not and may never be granted.

We shall, therefore, order COI to show cause why it should not be fined for apparent violation of Rule 25-24.470, Florida Administrative Code. Upon consideration, we find that a fine of \$25,000 for operating without a certificate is appropriate. The company's response to the show cause must contain specific allegations of fact or law. If COI fails to respond to this show cause within 20 days of the issuance of this Order, the fine shall be assessed. The fine must be paid within five (5) business days after the expiration of the show cause response period. If the fine is not paid after reasonable collection efforts by the Commission, it will be forwarded to the Office of the Comptroller for collection. If the fine is paid, it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Communication Opportunity, Inc.'s application to provide interexchange telecommunications service is hereby denied. It is further

ORDERED that all certificated interexchange telecommunications providers shall deny or discontinue providing interexchange telecommunications service to Communication Opportunity, Inc., pursuant to the provisions of Rule 25-24.470(3), Florida Administrative Code, which prohibits the provision of regulated telecommunications service to uncertificated resellers. It is further

ORDERED that Communication Opportunity, Inc. shall show cause, in writing, within 20 days of the issuance of this Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code. It is further

ORDERED that any response to the Order to Show Cause filed by Communication Opportunity, Inc. shall contain specific allegations of fact and law. It is further

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ORDERED that any response to the Order to Show Cause shall be filed with the Director of the Division of Records and Reporting within 20 days of issuance of this Order. It is further

ORDERED that upon receipt of Communication Opportunity, Inc.'s response to the Order to Show Cause, and upon its request for a hearing, further proceedings will be scheduled by the Commission, at which time Communication Opportunity, Inc. will have an opportunity to contest the allegations in the body of this Order. It is further

ORDERED that if Communication Opportunity, Inc. fails to file a timely response to the Order to Show Cause, such failure shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that if Communication Opportunity, Inc. fails to respond to this Order within 20 days of its issuance date, the fine shall be deemed assessed. Communication Opportunity, Inc. must pay the fine within five (5) business days after the expiration of the show cause response period. It is further

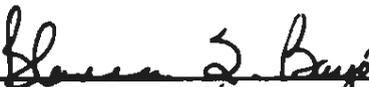
ORDERED that the Commission shall forward any fine payment received to the Office of the Comptroller for deposit in the Florida General Revenue Fund, pursuant to Section 364.295, Florida Statutes. It is further

ORDERED that the portion of this Order that denies the certificate to provide interexchange telecommunication service and requires all certificated interexchange providers to cease providing or deny service to Communication Opportunity, Inc. is issued as proposed agency action and shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this docket shall remain open pending resolution of the show cause process or any protest to the Proposed Agency Action portion of this Order.

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By ORDER of the Florida Public Service Commission this 10th
day of April, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

KMP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 show cause portion of this Order is preliminary, procedural or intermediate in nature. 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 25-22.037(1), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 30, 1998.

Failure to respond to the order to show cause within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

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The portions of the action proposed herein relative to certification and discontinuation of interexchange telecommunication services are 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 portion of the 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 1, 1998.

In the absence of such a petition, the proposed agency action portion of the 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 the proposed agency action portions of this order become final and effective on the date described above, any party substantially 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 Appeals 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.