

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
certificate to provide
interexchange
telecommunications service by
KTNT Communications, Inc. d/b/a
IDC Telecommunications.

DOCKET NO. 970109-TI
ORDER NO. PSC-98-1272-FOF-TI
ISSUED: September 28, 1998

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

ORDER GRANTING CERTIFICATE TO
PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICE

APPEARANCES:

Patrick K. Wiggins, Esq., Wiggins & Villacorta, Post
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On behalf of KTNT Communications, Inc. d/b/a IDC
Telecommunications.

Michael A. Gross, Esq., Assistant Attorney General,
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Tallahassee, FL 32399-1050.
On behalf of the Office of the Attorney General.

Charles J. Beck, Esq., Deputy General Counsel, Office of
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Madison Street, Room 812, Tallahassee, FL 32399-1400.
On behalf of the Office of Public Counsel.

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On behalf of the Commission Staff.

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FPSC-RECORDS/REPORTING

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BY THE COMMISSION:

CASE BACKGROUND

At our April 14, 1997, Agenda Conference, we addressed an application by KTNT Communications, Inc. d/b/a It Doesn't Matter and d/b/a I Don't Care (KTNT) for a certificate to provide interexchange telecommunications service in Florida. We deferred a decision on the company's application to obtain more information about the company's use of its proposed fictitious names. Thereafter, on June 19, 1997, the company informed the Commission by letter that it did not intend to use the fictitious names "It Doesn't Matter" and "I Don't Care" at that time. It asked that its certificate application be modified to request a certificate under the name KTNT Communications, Inc. d/b/a IDC Telecommunications.

On September 9, 1997, we issued Proposed Agency Action Order No. PSC-97-1060-FOF-TI approving the modified application and granting an interexchange telecommunications certificate to KTNT Communications, Inc. d/b/a IDC Telecommunications, with the specific condition that KTNT would have to seek formal Commission approval to use any other fictitious name in the future. On September 15, 1997, the Office of Public Counsel (OPC), filed a timely protest of our Order, raising specific issues with respect to KTNT's managerial capabilities and business practices because of its use or proposed use of the fictitious names. On November 7, 1997, the Office of the Attorney General (AG) filed a petition to intervene in the proceeding. By Order PSC-97-1576-PCO-TI, issued on December 15, 1997, the Commission granted the AG's intervention.

On May 28, 1998, we held an administrative hearing on the issues identified by the parties. In its prefiled testimony and at the hearing, KTNT explained that because of the protest it was withdrawing its request to receive a certificate under the name KTNT Communications, Inc. d/b/a IDC Telecommunications. Instead, KTNT renewed its request that the certificate be issued in the original application name, KTNT Communications, Inc. d/b/a It Doesn't Matter and d/b/a I Don't Care. Thus the question of whether KTNT should be permitted to use its unusual fictitious names to provide telecommunications service in Florida was squarely addressed in this proceeding. Our decision on the matter is set forth in detail below.

DECISION

KTNT Communications, Inc. is a Texas corporation, registered to do business in Florida. Florida Secretary of State's office has approved KTNT's fictitious names, "I Don't Care" and "It Doesn't Matter". KTNT is a switchless reseller of telecommunications service, whose primary business is the provision of operator service. As KTNT witness Dees explained, KTNT plans at some point to provide other telecommunications service, such as one plus and 800-888; but at present KTNT's business involves handling operator assisted calls when a customer dials only "0", with no other digits.

Witness Dees asserted that KTNT has the financial, technical and managerial capability to conduct this business. He stated that KTNT started business in Texas in February of 1995, expanded into Michigan and Ohio in April of 1997, and has the financial resources to expand into Florida and other states. According to witness Dees, KTNT received over a million dollars in revenue last year. Since KTNT operates as a reseller of telecommunications service, it has contracts with underlying carriers to conduct the technical side of the business. The switch, T1's and operator centers are all leased facilities. Mr. Dees claimed that; "[e]ven though KTNT has a firm understanding of the technical side, it obviously does not need to manage in detail this side of the business." KTNT also has a contract with another company, ZPDI of San Antonio, Texas, to handle all of its billing.

Witness Dees claimed that KTNT has proven its managerial competence to run its business in Florida by its demonstrated success in other states, and by the fact that it continues to expand throughout the country. Witness Dees asserted that out of 300,000 calls completed in Texas, KTNT has never had a complaint filed against it about the use of its fictitious names. In response to questioning by OPC, Mr. Dees acknowledged that one customer had complained about the names, but Mr. Dees contended that the customer originally complained about KTNT's rates, and only made the complaint about the fictitious names after he had read articles about them in the newspaper. Mr. Dees also asserted that the company will comply with Commission rules, orders, and policies pertaining to the reselling of intrastate telecommunications services in Florida. KTNT argues that by these facts KTNT has made the requisite showing, pursuant to Section 364.337(3), Florida Statutes, that it has sufficient technical,

financial, and managerial capability to provide interexchange telecommunications services within the state.

The Office of Public Counsel and the Attorney General do not dispute KTNT's assertion that it has the requisite financial and technical capability to provide telecommunications service in Florida. They do dispute the assertion that KTNT has the managerial capability to operate in Florida. They state that:

KTNT has made it clear that its management wishes to use fictitious names such as "I Don't Care" and "It Doesn't Matter" to trick the public into using their service. Since such operations are a management decision, the company has shown that it has inadequate management capabilities to support a certificate from this Commission.

OPC's and the AG's witness Poucher explained that KTNT's primary product is operator transfer service, where the company offers operator services to customers who dial "0" and request that an operator complete a toll call for them. According to witness Poucher, KTNT registers its fictitious names with the local exchange carrier, such as BellSouth, so that the company may share in default operator services traffic generated through "0" dialing. When a customer who has dialed "0" indicates to the local exchange operator that he or she wants to make a collect, person-to-person, third party, or calling card call, the local operator offers to connect the customer to the operator services company of the customer's choice to complete the call. Witness Poucher claimed that if the customer responds, "I don't care" or "It doesn't matter", the call will go to KTNT, even though the customer may never have heard of the company or its fictitious names. OPC and the AG contend that KTNT has been so successful in its reliance upon deception or accidental choice to attract customers that it has spent less than \$500 on marketing advertisement while generating a million dollars in revenue.

Witness Poucher contended that this practice is deceptive and unfair to customers, and anticompetitive and unfair to the approximately fifteen other companies who are registered with BellSouth to provide operator transfer services in Florida. Mr. Poucher explains that normally when a customer does not have a choice of a company to provide operator services, the call will be distributed to the registered providers on an alternating basis.

By using its fictitious names, KTNT forecloses the other companies from their fair share of the default business.

Witness Poucher argued that a company that engages in this type of practice has not demonstrated that it has the appropriate management capability to do business in Florida, and "[i]f the Commission grants approval for the use of the two names proposed by KTNT, there will be no basis in the future to preclude the use of other deceptive names." OPC and the AG also point out that KTNT withdrew its applications to provide telecommunications service in Georgia, Nevada, and Maryland in the face of opposition from utility commission staff in those states. Witness Poucher asserted that while he believes KTNT is competent to provide a service he would describe as deceptive and misleading, under those circumstances the Commission should not reward the management of such a company with a certificate to abuse Florida customers in the name of competition.

KTNT's witness Dees disagreed with Mr. Poucher's description of how selection of an operator service provider would work when a customer responds; "I don't care" or "It doesn't matter" to the local exchange company (LEC) operator's request that the customer choose a company. Witness Dees stated that the operator should respond to the customer that there is a carrier with that name and then ask the customer if that carrier is the customer's choice. According to witness Dees, the customer then has another opportunity to make an affirmative choice of a carrier, and may or may not choose "I Don't Care" or "It Doesn't Matter". Witness Dees asserted that KTNT has arranged with local companies to follow that practice in Texas, although he did admit under cross examination that KTNT has no written contract with any local exchange company to follow that practice. Witness Dees also asserted that KTNT will ask BellSouth and the other local exchange companies in Florida to follow that practice also, although he again admitted that KTNT cannot control how a BellSouth operator would handle such a call, and he had no proof beyond his assertion that local exchange company operators do so now or would do so in the future. Witness Dees contended that even though KTNT cannot guarantee that a local operator will ask the follow-up question that KTNT believes should be asked, the customer will still not be deceived, because KTNT brands all calls "I Don't Care" or "It Doesn't Matter" when the call is transferred, before any billing incident has occurred. Witness Dees asserted that KTNT's fictitious names are unusual and controversial, but they are not designed to, and do not in practice, trick people into using KTNT's operator services.

The OPC suggests that we're tricking customers and unfairly competing with other carriers large and small, but only the OPC and the Attorney General seems [sic] to be saying that. Customers are not complaining, competitors are not complaining, and regulators are not complaining.

Therefore, witness Dees asserted, the Commission should grant KTNT's application.

Section 364.337(3), Florida Statutes, establishes the statutory criteria to grant certification for the provision of interexchange telecommunication service in Florida. That section states:

The commission shall grant a certificate of authority to provide intrastate interexchange telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

Section 364.335, Florida Statutes, gives us some flexibility to respond to any unusual circumstances that may surround a particular certification application by providing that the Commission may grant a certificate with conditions or modifications in the public interest. The basic criteria for review of a certificate application, however, are found in section 364.337(3).

As mentioned above, OPC and the AG do not dispute KTNT's financial and technical capability to provide service, and the record shows that KTNT has the requisite ability in those areas. OPC and the AG claim that KTNT's proposed use of the two fictitious names tricks people into inadvertently using KTNT, and therefore KTNT does not have the managerial capability to provide service in Florida. OPC's and the AG's contention, however, is speculative. There is no solid evidence in the record to show that customers have been misled or harmed in Texas or other states where KTNT has been using these names to provide operator services for some time. Nor is there any evidence in the record to demonstrate that KTNT's competitors have complained of KTNT's business practices. Witness Poucher contends only that KTNT will have the opportunity to deceive customers and harm competitors if it is permitted to use

these names. According to OPC and the AG, the use of the names by itself is sufficient to prove managerial inadequacy.

We agree that the names in question and KTNT's use of them are questionable, and they are certainly controversial; but the record does not indicate that they are necessarily deceptive in practice. If local exchange operators follow the practice that KTNT asserts it will ask them to follow, and if KTNT brands the calls it receives as it has asserted it will, customers will be informed twice that they are using a company called "I don't care" or "It Doesn't Matter", and they will have two opportunities to reject KTNT as their operator service provider. The record shows that in practice KTNT will have no more opportunity to deceive customers by its fictitious names than several other companies the Commission has certificated to provide service in Florida. We also do not believe that it is entirely logical to contend that KTNT's fictitious names rob customers of their right to choose an operator services provider when customers would only use the words "I don't care" or "It doesn't matter" to indicate that they had relinquished their right to choose.

Further, and perhaps most importantly for the decision we make here, as witness Poucher confirmed at the hearing, if customers or competitors are in fact harmed, we have continuing authority to review the company's practices and correct the problems when and if they occur. For these reasons, we find that KTNT has adequately shown that it has the financial, technical, and managerial capability to provide intrastate interexchange telecommunications service, as section 366.337(3), Florida Statutes, requires. We also find that KTNT's business plans are consistent with the determination that KTNT has the financial, technical, and managerial capability to provide telecommunications service in the state and therefore they are in the public interest. We further find that it is in the public interest to allow KTNT to obtain a certificate from the Commission, and we grant KTNT d/b/a "I Don't Care" and "It Doesn't Matter" Florida Public Service Commission Certificate No. 4870 to operate as a switchless reseller and operator service provider within the State of Florida, without conditions or modifications. KTNT must seek our formal approval of any proposal to operate in Florida under any other or additional fictitious names.

KTNT affirmed at the hearing that it would make serious efforts to insure that when customers said "I don't care" or "it doesn't matter" in response to a local operator's request to choose

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a provider, the operator would specifically inform the customer that there was a company by that name. We expect KTNT to make the efforts it promised. We also expect KTNT, as it affirmed that it would, to comply with Commission rules, orders, and policies pertaining to the reselling of intrastate telecommunications services in Florida. We hereby inform KTNT that if it fails to perform as it has asserted that it will, we will not hesitate to revisit this decision.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of KTNT Communications, Inc. d/b/a I Don't Care and d/b/a It Doesn't Matter for certification to provide interexchange telecommunications service is hereby approved. KTNT shall be granted Certificate No. 4870. It is further

ORDERED that KTNT must seek formal Commission approval of any proposal to operate in Florida under any other or any additional fictitious names. It is further

ORDERED that if no party files a Motion for Reconsideration or Notice of Appeal of this final order, the docket may be closed.

By ORDER of the Florida Public Service Commission this 28th day of September, 1998.



KAY FLYNN, Chief
Bureau of Records

(S E A L)

MCB

DISSENT

Commissioner J. Terry Deason:

I respectfully dissent from the majority's decision in this case. I believe that by approving these particular fictitious names, the Commission has created the potential for abuse and the opportunity to deceive the public. It is for these reasons that I believe that it is not in the public interest to grant this certificate.

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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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 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.