

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of
name change on IXC Certificate
No. 2497 from AmeriVision
Communications, Inc. to
AmeriVision Communications, Inc.
d/b/a LifeLine Communications.

DOCKET NO. 020178-TI
ORDER NO. PSC-02-0567-PAA-TI
ISSUED: April 25, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING NAME CHANGE

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 a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

On February 15, 1991, AmeriVision Communications, Inc.
(AmeriVision) obtained Florida Public Service Commission
interexchange company (IXC) Certificate No. 2497. On April 26,
2000, in Docket No. 000153-TI, we issued Proposed Agency Action
(PAA) Order No. PSC-00-0827-PAA-TI, denying AmeriVision's request
to change the name on its certificate from AmeriVision
Communications, Inc. to AmeriVision Communications, Inc. d/b/a
LifeLine Communications. Having received no protests, on May 19,
2000, Consummating Order No. PSC-00-0999-CO-TI issued, making Order
No. PSC-00-0827-PAA-TI final and effective.

DOCUMENT NUMBER-DATE

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On April 25, 2001, Docket 010591-TI was opened to determine whether AmeriVision's IXC Certificate No. 2497 should be canceled for the apparent violation of Order No. PSC-00-0827-PAA-TI. We issued PAA Order No. PSC-01-1170-PAA-TI on May 23, 2001, proposing cancellation of AmeriVision's IXC Certificate No. 2497. On November 2, 2001, we received an offer of settlement from AmeriVision to resolve the issues in Docket No. 010591-TI.

On February 25, 2002, we issued Order No. PSC-02-0240-AS-TI, accepting AmeriVision's settlement offer of a \$5,000 payment into the General Revenue Fund to settle all issues in Docket No. 010591-TI. We, further, ordered AmeriVision to file a petition for name change no later than March 1, 2002. AmeriVision filed its Petition on March 1, 2002, requesting Approval of Name Change from AmeriVision Communications, Inc., to AmeriVision Communications, Inc. d/b/a LifeLine Communications.

We are vested with jurisdiction over this matter pursuant to Sections 364.01(4)(c) and 364.337, Florida Statutes.

ANALYSIS

In its Petition, AmeriVision offers nine reasons why we should recognize that the company's business name, AmeriVision Communications, Inc. d/b/a LifeLine Communications, is in the public interest. The reasons enumerated are summarized, with our comments, as follows:

1. The Petitioner provides that the company's name has been AmeriVision Communications, Inc. d/b/a LifeLine Communications under the laws of Florida since 1999.

Our staff has verified that AmeriVision registered the fictitious name, LifeLine Communications, with the Florida Secretary of State, Division of Corporations, on December 7, 1999.

2. The Petitioner provides that the company has provided IXC services in Florida for twelve years and its record of regulatory compliance is exemplary. AmeriVision believes that there has never been a consumer complaint related to the use of its fictitious name or service mark.

We note that the company obtained its IXC certification in 1991. Since July 1999, a total of eleven consumer complaints have been filed with the Commission. Of these complaints, our Division of Consumer Affairs closed five of the complaints as apparent rule violations. None of the complaints were related to the company's use of the fictitious name, LifeLine Communications.

3. The Petitioner provides that the company markets to church and faith-based organizations, and the service mark LifeLine connotes spiritual support, not financial subsidy.

Based on research on the Internet and listening to radio advertisements, it appears that the company's primary market initiatives are church and faith-based organizations. We also note that churches and faith-based organizations share in the proceeds from the company's sales of IXC telecommunications services.

4. The Petitioner provides that the company has used its service mark alongside the Federal Lifeline Assistance Program for fourteen years without customer confusion.

It has been determined that the company has advertised on radio using the fictitious name LifeLine Communications for at least four years in Florida, and based on the lack of complaints, without any apparent consumer confusion regarding the company's fictitious name and the Federal Lifeline Assistance Program. AmeriVision provides IXC telecommunications services and the Federal Lifeline Assistance Program relates to local exchange services. We submit that any consumer confusion could be readily remedied if the company's customer service representatives are appropriately trained. The service representatives should be trained to direct a consumer to call a local exchange company when a consumer's inquiry relates to the Federal Lifeline Assistance Program and local exchange services.

5. The Petitioner provides that commerce appears to favor more rather than fewer uses of the mark "Lifeline." Lifeline appears in approximately 110 current marks on the Principal Register and most of the entities that own these marks do business in Florida.

Documents obtained from the United States Patent and Trademark Office's website lists more than 100 active uses of the Lifeline trademark or service mark.

6. The Petitioner provides that federal statutes favor use of protected service marks and the company's service mark is protected under the Lanham Act, 15 U.S.C. §§ 1051-1127. AmeriVision provides that service marks are secured by statutory and common law because their use promotes the economy, which is in the public interest.

We acknowledge that service marks and trademarks are protected under the Lanham Act and that promotion of the economy is in the public interest. However, it should be noted that we did not deny AmeriVision the use of its service mark, LifeLine, but instead denied AmeriVision the use of its fictitious name LifeLine Communications. Our actions were clearly articulated in Order No. PSC-02-0240-AS-TI.

7. The Petitioner provides that Chapter 495, Florida Statutes, which codifies the state common law, provides protections similar to that of the Lanham Act. The company believes that the Florida Statutes secure marks because their use is in the public interest.

Our response is the same as provided in paragraph 6.

8. The Petitioner provides that the common law favors use of protected marks. In El Modelo Cigar Mfg. Co. v. Gato, 7 So. 23 (1890), The Florida Supreme Court stated that "Every manufacturer has the unquestionable right to distinguish the goods that he manufactures and sells by a particular label, symbol or trademark..." AmeriVision asserts that the same is true of marks that apply to services.

Our Order No. PSC-00-0827-PAA-TI denied the company the use of the fictitious name, but did not deny the company the use of its registered service mark. The company should have been using its certificated name regardless of whether or not it used a registered service mark.

9. The Petitioner provides that thirty-two other companies use "Lifeline" in their fictitious name without impairing the Federal Lifeline Assistance Program. The company believes that AmeriVision's use of the name LifeLine offers no greater chance of confusion with the Federal Lifeline Assistance Program than the other companies that operate in Florida using Lifeline in their fictitious names.

We found many companies registered with the Division of Corporations using Lifeline as part of their fictitious name. Therefore, the company's argument has some merit. However, LifeLine coupled with Communications may potentially cause confusion for some consumers. Nevertheless, based on a review of consumer complaints filed with our Division of Consumer Affairs, no consumer has, to date, expressed confusion or concern about AmeriVision's use of the fictitious name LifeLine Communications.

In Section B of its Petition, AmeriVision concludes that we based our concerns on AmeriVision's fictitious name and service mark creating customer confusion with respect to the Federal Lifeline Assistance Program, solely on the similarity of the names. AmeriVision offers that there is no credible threat to the public welfare from its use of the fictitious name, LifeLine Communications. In Order No. PSC-02-0240-AS-TI, we provided the company an opportunity to file a petition for name change, allowing the company an opportunity to present its case.

FINDING

We take this opportunity to emphasize that AmeriVision, as with all companies regulated by us, should be aware that adding a fictitious name to a tariff is synonymous with adding a fictitious name to a Certificate of Public Convenience and Necessity. We also stress that our rules require that companies use their certificated names in marketing and on bills. These rules were established to ensure that the public, as well as our staff, is keenly aware of the provider of services regulated by the Commission.

We concur with the Petitioner's suggestion that the likelihood of consumer confusion over the fictitious name LifeLine Communications with that of the Federal Lifeline Assistance Program

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will likely be minimal. Accordingly, we hereby grant AmeriVision Communications, Inc.'s request to change the name on Certificate No. 2497 to AmeriVision Communications, Inc. d/b/a Lifeline Communications.

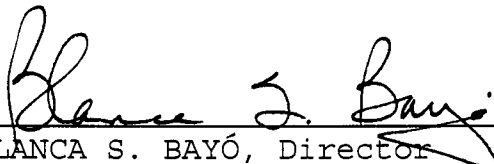
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that AmeriVision Communications, Inc.'s request to change the name on Certificate No. 2497 to AmeriVision Communications, Inc. d/b/a Lifeline Communications is hereby granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, 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 in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 25th Day of April, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

CLF

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 16, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.