

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of CENTEL NETWORK) DOCKET NO. 890689-TI
 COMMUNICATIONS, INC. d/b/a CENTEL NET) ORDER NO. 22407
 for authority to provide interexchange) ISSUED: 1-11-90
 telecommunications service.)
)

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION

ORDER GRANTING CERTIFICATE UPON CERTAIN
TERMS AND CONDITIONS AND SETTING
FOR HEARING THE COMPENSATION ISSUE

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission that the action discussed in Sections I and II of this Order are 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.

I. Application

On May 18, 1989, Centel Network Communications, Inc. (Centel Net or the Company) applied to this Commission for authority to provide interexchange telecommunications service. Centel Net proposes to provide long distance message telecommunications service (MTS) from equal access end offices in exchanges served by Central Telephone Company of Florida. Centel Net will provide this service by reselling the services of other IXCs. Centel Net is a wholly-owned subsidiary of Centel Corporation, as is Central Telephone Company. Central Telephone Company of Florida, which is certificated as a local exchange company here in Florida, is a wholly-owned subsidiary of Central Telephone Company.

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If this application is granted, Centel Net will be the fifth IXC in Florida to be affiliated with a local exchange company (LEC). The most recent example, that of United Telephone Long Distance, Inc. (UTLD), was significant because it represented the first instance in which a major local exchange company established a separate, but wholly-owned subsidiary to provide long distance service. UTLD differs in that Centel Net is not a subsidiary of a local exchange company. Also, Centel Net states that it will neither receive immediate access to financing nor utilize the skilled workforce of the LEC as in the UTLD case.

MCI Telecommunications, Inc. (MCI) and the Office of Public Counsel (OPC) have intervened in this docket. MCI has requested a hearing, however, since this is a proposed agency action Order, MCI will have an opportunity to renew its objection if it believes it to be necessary.

Centel Net's application states that it will not share any employees, assets, facilities, office space, plant or equipment with Central Telephone Company of Florida. Additionally, Centel Net will neither state nor imply that it is Central Telephone Company of Florida. Centel Net also states that all agreements between Centel Net and Central Telephone Company of Florida for services and facilities will be pursuant to tariffs and contracts which will be available to all IXCs on similar terms and conditions. Centel Net also states that the exchange of information between Centel Net and Central Telephone Company of Florida will be on the same terms and conditions that are applicable to the exchange of information between Central Telephone Company of Florida and any other IXC.

Centel Net has stated in its application that it will not collect any customer deposits. Further, it attests to the accuracy of the information contained in its application and acknowledges receipt and understanding of this Commission's rules and regulations relating to the provision of interexchange telecommunications service in Florida.

By Order No. 13750, regarding Access Charges, in Docket No. 820537-TP, we prohibited interexchange telephone companies from constructing facilities to bypass a LEC without first demonstrating to this Commission that the LEC cannot offer the needed facilities at a competitive price in a timely manner. Therefore, Centel Net shall not bypass LEC facilities without first receiving express authority from this Commission.

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The certificate requested by Centel Net would authorize it to operate as an interexchange telephone company providing long distance telecommunications service within the State of Florida. The authority would be statewide according to Commission statutes and rules pertaining to the services identified in the applicant's tariff.

Rule 25-24.485, Florida Administrative Code, requires that each interexchange carrier wishing to do business in Florida maintain a tariff on file with this Commission of particular format and content. Centel Net's tariff is of proper format and meets all the requirements of this rule.

After having considered Centel Net's application, we find that it meets all applicable requirements to provide intrastate long distance telephone service in Florida. Therefore, we find it appropriate to grant Centel Net a Certificate of Public Convenience and Necessity to operate as an interexchange telephone company under the terms and conditions set out hereafter.

II. Special Terms and Conditions of Certification

To avoid the possibility of anti-competitive practices and any negative impact on customers and other IXCs, we find it appropriate to set out special terms and conditions for Centel Net's certification.

a) Central Telephone Company of Florida shall offer all services and facilities provided to Centel Net to any other IXC under identical terms and conditions. Also, Central Telephone Company of Florida shall make available, to any requesting IXC, a list of its departments providing service to Centel Net and a copy of all contracts, agreements, memoranda or other documents that govern the price, terms or conditions on which services are provided to Centel Net. Further, all services shall be provided pursuant to either a contract or tariff.

b) No officer, director or employee of Centel Net shall have access to any proprietary information held by Central Telephone Company of Florida that relates to other IXCS. Information such as access contracts, number of customers served, traffic patterns and credit reports is generally considered proprietary by IXCs and shall not be available to

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Centel Net. Any other type of information provided to Centel Net shall be provided to all IXCs in Florida.

c) Central Telephone Company of Florida and Centel Net shall submit a plan for our approval showing how Central Telephone Company of Florida proposes to ensure that all proprietary information relating to other IXCs remains confidential. This plan shall be filed within 30 days of the effective date of this Order.

d) We are concerned that customers may be confused that they are dealing with one company for both their local and long distance service because both Centel Net and the LEC will be using the name "Centel." For this reason, Central Telephone Company of Florida and Centel Net shall not directly state or imply that doing business with Centel Net is the same as doing business with Central Telephone Company of Florida.

e) To further prevent customer confusion, Central Telephone Company of Florida shall provide a complete list of all IXCs that provide presubscription service in the area to any new customer or any existing customer who wants to change his presubscribed carrier. Central Telephone Company of Florida's sales representatives shall not suggest to customers that they should subscribe to Centel Net.

f) Central Telephone Company of Florida shall not provide any staff for, nor make any loans to, Centel Net. Also, Central Telephone Company of Florida shall not provide any advance notice of new access arrangements to Centel Net.

III. Consideration of Sales Representative Agreement and Marketing Relationship Deferred

Because we are concerned that Centel Net will have an unfair advantage over other IXCs if Central Telephone Company of Florida's sales representatives act as agents selling Centel Net's service, we find it appropriate to defer our consideration of the proposed sales agreement until we have done further investigation and have more information regarding any other such agreements between the LECs and IXCs. Until such time as this Commission approves a marketing arrangement between Centel Net and Central Telephone Company of Florida, no marketing efforts or solicitation of new customers on behalf of

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Centel Net shall be made by Central Telephone Company of Florida.

IV. Cross-Subsidization Concerns

Centel Net has stated that Central Telephone Company of Florida will not provide it personnel, facilities and services. However, this does not prohibit Centel Net and Central Telephone Company of Florida from entering into any service agreement in the future. Rule 25-4.019(5)(c), Florida Administrative Code, requires that each LEC provide quarterly notice of execution of new contracts or agreements including amendments to existing contracts to this Commission. Therefore, this Commission shall be provided such notice of any contracts or agreements between Central Telephone Company of Florida and Centel Net. However, any contracts or agreements between Centel Corporation and Centel Net are also of concern because of the nature of this arrangement.

We are concerned that cross-subsidization not occur between Centel Net and Central Telephone Company of Florida and Centel Corporation. Therefore, our examination of the process of cost allocations between these companies and of the terms of contracts or agreements between them is vital.

In an Order recently issued in Docket No. 88-1156, the Public Service Commission of Nevada considered an application for certification by Centel Net-Nevada Operation proposing a relationship between Centel Net-Nevada and Central Telephone Company of Nevada similar to that proposed herein between Centel Net and Central Telephone Company of Florida. In its Order, the Nevada Commission discussed its concerns regarding the possibility of cross-subsidization between the companies. Therefore, the Nevada Commission ordered that a revised cost allocation plan of Centel Net, Central Telephone and Centel Corporation be submitted. We share the concerns raised by the Nevada Commission on this issue. We have also reviewed the revised service agreement with Central Telephone Company and Centel Corporation to reflect the revised cost allocation procedures, and agree with the proposed changes made in the service agreements to reflect more direct assignment of costs rather than using a general allocator. Because of our concerns regarding the possibility of cross-subsidization, Centel Net shall submit the following documents and information:

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a) Centel Net shall submit a copy of Centel Corporation's revised cost allocation manual referred to in Docket No. 88-1156 before the Public Service Commission of Nevada. Also, Centel Net shall submit a copy of each service agreement existing between Centel Corporation and Centel Net. These documents shall be submitted within 30 days of the issuance of this Order.

b) Centel Net shall submit a copy of Central Telephone Company's revised cost allocation manual referred to in Docket No. 88-1156 before the Public Service Commission of Nevada, along with a full description of each service agreement existing between Central Telephone Company and Centel Net. These documents shall be submitted within 30 days of the issuance of this Order.

c) Centel Net shall submit a full description of any new or revised contract between Centel Corporation, Central Telephone Company and Central Telephone Company of Florida and Centel Net within 90 days of execution of the new contract or revision.

V. The Compensation Issue Set for Hearing

The concept of compensation between affiliated companies is not new in Florida. In Docket No. 870285-TI, we issued Order No. 18939, in which we found it to be within the public interest to require UTLD to compensate United Telephone Company (UNITED) for the intangible benefits that it receives, including, but not limited to, the use of the United name, the use of the United logo and reliance on the United reputation. The level of compensation was set equal to 2.8% of the difference between net revenues (gross revenues less uncollectibles) and originating and terminating access.

UTLD and United appealed that part of the Order to the Florida Supreme Court which required UTLD to compensate United for the intangible benefits it receives through its association with United. UTLD and United argued that the Order was unconstitutional for two reasons--that the compensation fee was confiscatory, thus depriving them of property without due process of law, and that the compensation fee was discriminatory and denied UTLD protection under the law since no other IXC had been required to pay a similar fee. On July

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6, 1989, the Florida Supreme Court affirmed our Order.

In response to MCI's and OPC's concerns and our interrogatories, Centel Net has claimed a compensation payment is without economic or legal justification. By Order No. 18939, we imposed the compensation fee in recognition of a variety of intangible benefits flowing to UTLD as a result of its relationship with United. Centel Net argues that these relationships are not present here, such as immediate access to financing and the ability to capitalize on a trained, skilled work force. Centel Net further asserts that it is not a subsidiary of Central Telephone of Florida, or its parent, Central Telephone Company, nor will it use any of Central Telephone Company of Florida's work force except under contracts which are available to other IXCs. Centel Net states that it will only employ the use of the name and reputation of Centel. The Centel name and logo are property of Centel Corporation and not Central Telephone of Florida. Similarly, the Centel reputation is not the result of only Central Telephone of Florida, but also the management of Centel Corporation.

In MCI's Petition to Intervene, MCI claims that the use of the Centel name gives Centel Net a marketing advantage. Centel Net countered that this is an exaggerated claim. Centel Net asserts that it would not have a competitive advantage because equal access was concluded years ago, and it is marketing efforts which will be essential to establish a customer base. Centel Net cannot simply rely on the Centel name.

We agree that the Centel name may provide Centel Net a competitive advantage as customers are familiar with the name through the local exchange company and may associate the two companies. While equal access concluded several years ago, Centel Net may be in a favorable position due to the high fluctuation of customers in Central Telephone Company of Florida's market area.

It is clear that Centel Net believes that a compensation fee is inappropriate and that it will protest any order requiring such a fee at this time. For this reason, Centel Net proposed that it be certificated and allowed to operate as an IXC on the condition that the outcome of a hearing on the compensation issue shall be retroactive to the date of certification. Because this proposal would protect the

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ratepayers in the event we determine that a compensation fee is appropriate, we find it reasonable. Therefore, we will by this Order certificate Centel Net and allow it to begin its operation as an IXC, however, any compensation fee subsequently determined to be appropriate shall be retroactive to the date of Centel Net's certification. We hereby set the issue of "Is a compensation fee appropriate and, if so, what amount should it be?" for hearing on our own motion.

This docket shall remain open until we resolve the sales representative agreement, the marketing relationship and compensation issues. However, the proposed agency action provisions of this Order will become effective if no timely protest is received.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of Centel Network Communications, Inc., for a certificate to provide intrastate interexchange telecommunications service is granted subject to the special terms and conditions set forth in the body of this Order. It is further

ORDERED that the effective date of the certificate is the first working day following the date specified below, if there is no protest to the proposed agency action within the time frame set forth below. It is further

ORDERED that Centel Network Communications, Inc., shall submit all of the documents and information requested in the body of this Order by the times specified herein. It is further

ORDERED that no marketing or sales representation efforts on behalf of Centel Network Communications, Inc., shall be performed by Central Telephone Company of Florida until and unless such is approved by this Commission. It is further

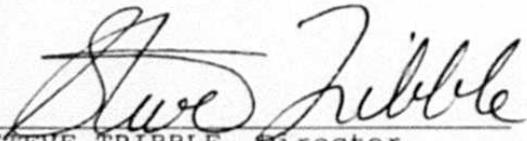
ORDERED that the issue of what, if any, compensation fee is appropriate for Centel Network Communications, Inc., to remit to Central Telephone Company of Florida is set for hearing on our own motion. It is further

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 25-22.36,

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Florida Administrative Code, is received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below.

By ORDER of the Florida Public Service Commission,
this 11th day of JANUARY, 1990.


STEVE TRIBBLE, Director
Division of Records and Reporting

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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.

As identified in the body of this order, our action granting Centel Network Communications, Inc., a certificate of public convenience and necessity to provide interexchange telecommunications service with special terms and conditions 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 in Sections I and II of 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 February 1, 1990. In the absence of such a petition, Sections I and II order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

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 Sections I and II of 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 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

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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.

Any party adversely affected by the Commission's final action, in Sections III, IV and V of this Order 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.