

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Vista-United)	DOCKET NO. 890497-TI
Telecommunications for a certificate)	
of public convenience and necessity)	ORDER NO. 22790
authorizing operation as an interex-)	
change carrier in Florida.)	ISSUED: 4-9-90
)	

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 ACTIONORDER APPROVING APPLICATION FOR IXC 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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Vista-United Telecommunications (Vista-United) has been a certificated Local Exchange Carrier (LEC) in Florida since 1971. Vista-United is a partnership between Vista Communications, Inc. (51%) and Florida Telephone Corporation (49%). Vista Communications, Inc. is a wholly-owned subsidiary of the Walt Disney Co. Florida Telephone Corporation is a wholly-owned subsidiary of United Telecommunications, Inc., parent of United Telephone Company of Florida.

On April 1, 1989, Vista-United submitted an application for authority to operate as an interexchange carrier providing alternative operator service. Specifically, Vista-United alleges that it plans to provide operator service to hotels and payphones within its franchise territory. Currently, Vista-United has over 100 operators on staff and has the capabilities of providing desirable services such as foreign language assistance on long distance calls.

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On August 31, 1989, this Commission issued Order No. 21812 which authorized AT&T Communications of the Southern States, Inc. (AT&T-C) to intervene in this docket. On November 17, 1989, Order No. 22189 was issued which authorized MCI Telecommunications Corporation's (MCI) intervention.

Vista-United currently provides interstate and intrastate, interLATA operator services to the above named hotels and other commercial lodging properties on behalf of AT&T-C. Vista-United alleges that AT&T-C has notified Vista-United that it will terminate the operator services portion of their contract as of June, 1990.

To comply with Chapter 25-24.490(3), FAC, the applicant has stated in its application it will not collect any deposits or advance payments for more than one month in advance from customers in Florida.

Vista-United has stated that it does not intend to appear on any presubscription ballot and that its IXC services will not presently be offered to residential or business customers on a presubscribed, interLATA basis. Instead, Vista-United states that customer PBXs will be used to route such interLATA traffic to the IXC.

After having considered Vista-United's application, we conclude that it appears to meet all applicable requirements and be capable of providing intrastate long distance telephone service with alternative operator service. Therefore, the application of Vista-United for a Certificate of Public Convenience and Necessity to provide interexchange telephone services is granted, subject to certain conditions hereinafter provided.

The certificate granted to Vista-United will authorize it to operate as a telephone company providing long distance telecommunications service with alternative operator service within the State of Florida. The authority will be statewide according to the Commission's Rules and Orders pertaining to the provision of interexchange service and alternative operator service.

If no protest is received to the order proposing agency action, Vista-United's authority will be effective upon the expiration of the protest period.

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An issue was raised as to whether Vista-United should conduct its IXC operations through a subsidiary, as was done in Docket No. 870285, Application of United Telephone Long Distance (UTLD) for a resale certificate. However, we believe that the risk is no greater or less that cross-subsidization will occur if a subsidiary similar to UTLD is formed. Vista-United is not a company with a complex accounting system like the larger telephone companies. Their current cost allocation manual appears to be reasonable. If the IXC operation takes place, the main shared resource will be the operators and costs related thereto. Because of the unique nature of the company and the proposed service, monitoring for potential cross-subsidization is not a difficult task. Therefore, we do not believe that a separate subsidiary is needed in this unique instance.

The intervenors, AT&T Communications of the Southern States, Inc. (ATT-C) and MCI Communications Corporation (MCI), expressed concerns over the authorization of Vista-United as an IXC. MCI stated that the Commission should deny Vista-United's application on the basis that "The public interest is not well served by the certification of a local exchange company, which provides bottleneck monopoly local exchange and access services, to provide interexchange service". As an alternative, MCI requested that the Commission place various restrictions and safeguards to decrease the chances of anti-competitive behavior and cross-subsidization. Similarly, ATT-C is concerned about the anti-competitive implications which could arise from Vista-United's status as both a LEC and an IXC.

These concerns generally arise from the fact that Vista-United will provide both LEC and IXC services as one company. In Docket Number 890689-TI, Application of Centel Network Communications (Centel Net) for Authority to Provide Interexchange Telecommunications Services in Florida, the Commission decided that Central Telephone Company of Florida and Centel Net should not state or imply that doing business with Centel Net is the same as doing business with Central. The same condition was imposed on UTLD. This condition cannot be imposed on Vista-United since it will operate as one company. However, Vista-United is a unique company operating under unique conditions. Vista-United's business subscribers are either affiliated with the company or are knowledgeable business entities. Under these unique conditions, we do not think that it is necessary to separate the two entities.

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To alleviate the possibility that Vista-United may engage in anti-competitive practices and to prevent any negative impact on customers and other IXC's, Vista-United will be granted interexchange authority only under the following terms and conditions. Vista-United shall offer all services and facilities provided to its IXC operations to any other IXC under identical or similar terms and conditions. Also, Vista-United shall make available, to any requesting IXC, a list of its departments providing service to the IXC portion of its operations and a copy of all agreements, memorandum or other documents that govern the price, terms or conditions on which services are provided for its IXC operations.

Further, no officer, director or employee for Vista-United who has access to information regarding the IXC portion of its operations should have access to any proprietary information held by Vista-United that relates to other IXC's. Information contained in access contracts, number of customers served, traffic patterns, credit reports and other such information is generally considered proprietary by IXC's and should not be available to anyone who has access to Vista-United's information concerning their IXC operations. Any non-proprietary information that is available to Vista-United's IXC shall be available to all IXC's in Florida. Vista-United shall submit a plan for Commission approval showing how it proposes to ensure that all proprietary information relating to other IXC's will remain confidential. This plan shall be filed within thirty days after the issuance of the consummating order. Vista-United shall provide a complete list of all IXC's that provide presubscription service in the area to any new customer or any existing customer who wants to change his presubscribed carrier. The terms and conditions outlined above are similar to those conditions placed on UTLD and Centel Net as modified for this unique situation.

An issue was also raised as to whether the nonregulated IXC operations should be required to compensate the regulated operations and its ratepayers for the tangible and intangible benefits it receives from operating as one identity. This Commission has dealt with the compensation issue in two prior dockets. In the first docket, the Commission issued Order No. 18939 which found it in the public interest to require UTLD, an IXC which is a subsidiary of United Telephone Company of

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Florida (United), to compensate United for the services and tangible and intangible benefits that it receives.

In UTLD's case, the intangible benefits were found to include, the use of the name, logo, reputation and heritage, access to a ready, trained and skilled workforce, access to facilities and a ready source of financing. The services and tangible benefits included billing and collection, operator services, telemarketing services, accounting, floor space, general service and engineering. The level of the compensation was set equal to 2.8% of the difference between net revenues and originating and terminating access charges, not to exceed 17.5% of UTLD's net operating income, after taxes, to be computed without the fee.

We again faced this issue in the Centel Net case, Docket No. 890689-TI. Application of Centel Network Communications, Inc. (Centel Net) for Authority to Provide Interexchange Telecommunications Services in Florida. Centel Net is a wholly owned subsidiary of Central Telephone Company of Florida. Centel Net uses the name and logo of Centel. However, unlike UTLD, Centel Net does not engage in any sharing of personnel, facilities or financing from Central Telephone Company of Florida. We granted Centel Net a certificate but deferred the issue of compensation pending a hearing on that issue.

Because of the unique situation in this case we find that the nonregulated operations of Vista-United should not be required to compensate the regulated operations. Vista-United is different from any other telephone company in Florida in that it was created to serve Disney World. Further, since current statistics show that the company has 408 residential and 5,870 non-residential access lines, the majority of the customers would be businesses. Fifty-eight percent of the total non-residential access lines are affiliated with Disney World. It appears a safe assumption that the majority of these 58% affiliated access lines will be switched over to Vista-United for IXC services. To this 58% of the business customers, not only the name but also the affiliation with the Local Exchange Company is irrelevant. In this case, the IXC operation receives benefits from its association with Disney World and not from its association with the local exchange company.

The remaining 42% of the non-residential customers are hotels, resort properties and large retail businesses who are

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highly knowledgeable in running their businesses. We believe that recognition of Vista-United's name and reputation is immaterial to the majority of these future IXC customers; they are methodical business people who are well aware of the alternatives available for the kinds of services they desire. Because of the nature of the company's customers, the intangible value of Vista-United's name and logo appears to be negligible.

Vista-United employs very highly trained and versatile operators who speak numerous languages. Their current market area is tailored to serve the visitors of Disney World where a large percentage of the visitors are foreigners. To ease the language barrier problem, Vista-United offers multilingual operators capable of speaking up to seven different foreign languages. This is a unique feature that few companies can offer. However, this service is available to any IXC that wishes to obtain the operator service. Further, Vista-United states that its IXC operation will be subject to the same terms and conditions that other IXCs receive from Vista-United for leases and other contracts. Thus, it appears that there will be no extra benefit to the IXC's operations from its association with the local exchange operation.

In addition, the intangible benefit from a ready access to financing in UTLD's case is not applicable to Vista-United. Vista-United has no debt financing. It is operated as a partnership with 100% equity financing.

Given the unique nature of Vista-United, it appears that there is insufficient value flowing to the IXC operation from the IXC's association with the LEC. It appears that any benefits are generated from the association with Disney World and not the LEC. Thus, we find that there should not be any compensation fee imposed on the IXC operations.

On April 11, 1989 Vista-United Telecommunications filed a tariff to provide intrastate long distance service and AOS. We have examined the tariff and determined that it complies with Commission Rule 25-24.485 and is in compliance with Order No. 20489. Therefore, the tariff is approved.

Based on the foregoing, it is hereby

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ORDERED that the application of Vista-United Telecommunications for a certificate to operate as an interexchange carrier providing alternate operator services is hereby granted, subject to the conditions set forth herein. It is further,

ORDERED that the the certificate shall be effective upon expiration of the protest period, if no timely protests are received. It is further,

ORDERED that Vista-United's proposed tariff filing to offer interexchange long distance service and alternative operator service is approved. It is further,

ORDERED that this docket shall be closed after the expiration of the protest period if no timely protest has been filed. It is further,

ORDERED that a protest of any portion of the order will be considered a protest of the entire order.

By ORDER of the Florida Public Service Commission, this 9th day of APRIL, 1990.

 STEVE TRIBBLE, Director
 Division of Records and Reporting

(S E A L)

JSR

by: Kay Flynn
 Chief, Bureau of Records

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.

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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 April 30, 1990.

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, 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 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 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.