

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause proceedings against Fox Fiber Optics for violation of Rules 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required, and 25-4.043, Response to Commission Staff Inquiries.

DOCKET NO.: 961233-TI
FILED: 5-27-97

ORIGINAL
FILE COPY

RESPONSE OF FOX FIBER OPTICS
TO ORDER NO. PSC-97-0511-FOF-TI

On May 5, 1997, the Commission issued Order No. PSC-97-0511-FOF-TI ("Show Cause Order") requiring Fox Fiber Optics (Respondent) to show cause why it should not be fined for alleged violations of Rule 25-4.470 and Rule 25-4.043, Florida Administrative Code (FAC). Respondent's response to the Show Cause Order and its request for relief are provided below.

Procedural Background

1. Respondent's name and the address of its principal business office is:

Fox Fiber Optics
616 South Dillard Street
Winter Garden, Florida 34787

2. All notices, pleadings and orders should be directed to:

Patrick K. Wiggins
Wiggins & Villacorta, P.A.
Post Office Drawer 1657
Tallahassee, Florida 32302
(904) 222-1534

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU
- CTR _____
- EAG _____
- LEG 1
- LIN _____
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH *leg to Don*

RESPONSE

4. The Show Cause Order alleges two violations by Respondent. First, it alleges that Respondent provided intrastate

DOCUMENT NUMBER-DATE
05254 MAY 27 97
FPSC-RECORDS/REPORTING

telecommunications services for hire within the State of Florida without certification to do so. Second, the Show Cause Order alleges that Respondent violated Rule 25-4.043 by knowingly and willfully refusing or failing to timely respond to inquiries propounded by staff. Respondent denies both allegations.

5. Uncertificated Service. The allegation that Respondent provided uncertificated service is the result of confusion over the status of two different entities: (1) Respondent, Fox Fiber Optic, Inc., a company dedicated to marketing the services of WATS/800; and (2) WATS/800 which was doing business as Fox Fiber Optics. WATS/800 has been granted IXC authority and is the holder of Certificate Number 2929. All customers allegedly served by Respondent were in fact customers of WATS/800, a certificated interexchange carrier. These customers were assigned to the carrier identification code of WATS/800 and customer service was provided by WATS/800.

6. It was never Respondent's intent to be a carrier or a provider of service, but rather to develop a market niche for WATS/800, using a distinctive service mark, which was assigned to WATS/800 for its benefit. This intent is further reflected by the formal registration of the fictitious name with Secretary of State.

7. The management and principals of Respondent are the same persons as the management and principals of WATS/800, and these two entities share the same address. Given that WATS/800's management had complied with certification requirements of the Florida Public Service Commission, it makes no sense that as Respondent's

management they would set up another entity at the same location in order to violate those requirements.

8. The marketing and service strategy of the management of Respondent and WATS/800 had two distinct legal effects. First, it placed Respondent in the role of authorized marketing agent for WATS/800, a certificated carrier. Second, it placed WATS/800 in the position of doing business under the fictitious name "Fox Fiber Optics." Respondent is unaware whether WATS/800 was obligated to inform the Commission of its intent to offer various products under this fictitious name, or whether its failure to do so is a violation of any Commission rule or order.¹ It is clear, however, the instant case is not one of uncertificated provision of service, and the facts hereunder do not support the proposed sanctions.

9. Failure to Respond to Staff Inquiries. The notices sent by staff to Respondent were not directed to an officer of the company or any other person or authorized agent of the company. Rather, these notices were sent by certified mail to an employee, who is no longer with the company, Mr. Dennis Marshall. The notices were signed for by Ms. Janet Clinton, an employee of WATS/800, who delivered them unopened to Mr. Marshall. Respondent simply has no knowledge of what Mr. Marshall did with the notices. Because no officer or authorized agent of Respondent received the

¹ WATS/800's obligation to give the Commission notice of its use of a fictitious name is not at issue in the show cause order against Respondent; however, Respondent is authorized to note in this pleading that WATS/800 has requested administrative approval of a name change reflecting the fictitious names it uses in its marketing.

notices, Respondent did not receive actual or constructive notice of the staff inquiries and thus it may not be found in violation of Rule 25-4.043.

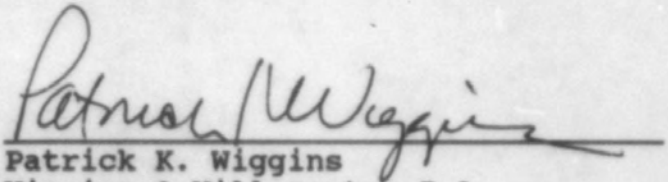
10. Relief Requested. Respondent requests a hearing pursuant to Section 120.57, Florida Statutes, on the issues of fact, policy and law raised by the Show Cause Order and this response.

CONCLUSION

11. The allegations of the Show Cause Order notwithstanding, Respondent did not provide intrastate telecommunications services for hire within the State of Florida without a certificate. Respondent simply provided marketing services for WATS/800, a certificated carrier doing business under a fictitious name, i.e., under the service mark "Fox Fiber Optics." Additionally, the facts establish that Respondent did not knowingly and willfully fail to timely respond to staff inquiries, since it did not receive actual or constructive notice of the staff inquiries. The sanctions proposed by the Commission in the Show Cause Order therefore are not warranted by the facts.

WHEREFORE, Respondent requests a hearing pursuant to Section 120.57, Florida Statutes, on the issues of fact, policy and law raised by the Show Cause Order and this response.

DATED this 27th day of May, 1997.

A handwritten signature in cursive script, reading "Patrick K. Wiggins", written over a horizontal line.

Patrick K. Wiggins
Wiggins & Villacorta, P.A.
501 East Tennessee Street
Suite B
Post Office Drawer 1657
Tallahassee, Florida 32302
(904) 222-1534

Attorneys for Fox Fiber Optics