

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application to Provide)
Interexchange Telecommunications)
Service by KTNT Communications,)
Inc., d/b/a IDC)
Telecommunications.)
_____)

DOCKET NO.: 70109-TI
FILED: 10/28, 97

MOTION TO DISMISS

KTNT Communications d/b/a IDC Telecommunications ("KTNT/IDC"), moves the Commission to dismiss the Petition for Section 120.57(1) Hearing and Protest of Proposed Agency Action filed by the Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, in this Proceeding. As grounds for this motion, KTNT/IDC states as follows:

BACKGROUND

1. As reflected in Order No. PSC-97-1060-FOF-TI ("PAA Order") issued on September 9, 1997, KTNT Communications ("KTNT") originally filed an application with the Commission for a certificate to provide interexchange telecommunications service under the fictitious names "It Doesn't Matter" and "I Don't Care."

At the April 4, 1997, Agenda Conference, the Commission deferred a decision on the application because of a controversy over the use of those specific fictitious names.

2. On June 19, 1997, KTNT informed the Commission by letter that it wished to change the name under which it sought certification to operate as an intrastate interexchange telecommunications company. Specifically, KTNT desired the certificate to be issued under the single name "KTNT Communications, Inc. d/b/a IDC Telecommunications." In addition,

ACK _____
AFA 1
APP _____
CAF _____
CMU Williams
CTR _____
EAG _____
LEG 2
LIT 5
CFC _____
PSC _____
ST 1
WAS _____
OTH _____

DOCUMENT NUMBER-DATE
11129 OCT 28 97
FPSC-RECORDS/REPORTING

KTNT withdrew its request that its certification be issued under the name, "KTNT Communications, Inc. d/b/a I Don't Care" and "KTNT Communications, Inc. d/b/a I Don't Know." KTNT made the change to simplify and expedite the decision to grant it the requested certification.

3. In the PAA Order the Commission acknowledged the revision to the application, and proposed that KTNT/IDC be granted a certificate:

Upon review of the application, it appears that KTNT has sufficient technical, financial, and managerial capability to provide interexchange telecommunications service, as required under Section 364.337(3), Florida Statutes. Accordingly, we hereby grant Certificate No. 4870 to KTNT. We note that we will carefully review any name changes on its certificate that KTNT may propose in the future.

4. On September 15, 1997, the Citizens protested the PAA Order. The apparent gravamen of the Citizen's protest is that because in the future KTNT/IDC intends to request permission to use the controversial fictitious names in specific ways, the mere harboring of this intention renders it managerially unfit to operate as an IXC in non-controversial ways. There are several infirmities in the Citizens' approach and protest.

GROUND FOR DISMISSAL

5. First, there is no current dispute of material issue of fact, policy or law before the Commission, and thus nothing to demand a hearing on. Basically, the Citizens allege that in the future KTNT/IDC will propose to use controversial fictitious names and that this future proposal gives rise to a current justiciable dispute. The inchoate plans of KTNT/IDC, however, do not adversely

affect the substantial interests of the Citizens. KTNT/IDC acknowledges that there is disagreement over what names it and other carriers may use in providing service, but this disagreement is simply not ripe for adjudication because KTNT does not currently propose to use any of the names that the Citizens find objectionable.

6. Second, as noted in paragraph 4, it appears that the Citizens claim that the management of KTNT/IDC is currently unfit because of its future plans. The essence of managerial fitness is the commitment and capacity to follow applicable rules and regulations designed to ensure that telecommunications service is provided in the public interest. There has been no allegation by anyone that KTNT/IDC will not follow applicable rules and regulations, nor is there any good faith basis for such an allegation to be made.

7. Indeed, the record in this case establishes that KTNT/IDC is managerially fit to hold a certificate in Florida. For example, by withdrawing the original request to use the controversial names, KTNT/IDC's management has demonstrated its willingness to follow not only applicable rules and regulations, but a sensitivity to the Commission's processes and preferences. KTNT management committed to work within the system to ensure that the Commission, the Citizens, and the Attorney General are fully apprised of any future request or plans to use the controversial names. Moreover, KTNT management believed, perhaps optimistically, that by proceeding in this fashion, the debate over the use of the controversial names

could be focused more productively on the proposed use (i.e., within the context of 0- service) rather than on vaporous concerns about how such names possibly could be misused. In short, the reaction of KTNT to the unprecedented opposition of the Citizens and Attorney General has been one of moderation. This reaction also demonstrates its fitness to hold a certificate.

8. Third, the Citizens complain that a denial of a certificate to KTNT is necessary to prevent "anticompetitive behavior." Unfortunately it is the Citizens's protest that is anticompetitive. Granting KTNT a certificate will simply put it in the same position as numerous other IXCs who at any moment could propose to use fictitious names that do not comport with the Citizens' subjective standard. Apparently the only way the Citizens would allow KTNT to obtain a certificate would be if KTNT promised never to request permission to use the names the Citizens find objectionable. No other IXC has ever been required to make such a promise, and imposing this entry barrier on KTNT is simply anticompetitive.

9. Fourth, allowing the protest and holding a hearing would violate KTNT's right to due process. KTNT has never shied away from the fact that some people object to the fictitious names¹.

¹ It is worth noting here that the Citizens and the Attorney General appear to be in the minority with respect to whether the use of the controversial fictitious names within the context of "0-" service is in the public interest or not. Many people believe that the names are funny and serve to neutralize the competitive advantage the bigger IXCs enjoy within the context of "0-" service. In addition, after handling some 500,000 calls in Texas, KTNT did not have a single complaint lodged with the Texas Public Service Commission about its names. In addition, no competitor has

But the Commission must take care to ensure that those who do object to the names do not inadvertently abuse the process in the name of the public interest. KTNT is entitled to due process of law. In this context, due process requires, in part, that alleged disputed issues of material fact, policy, and law be ripe for adjudication before KTNT is denied that which it is entitled to under law and before it is subjected to the costs and burdens of litigation.

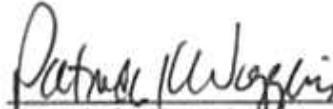
CONCLUSION

The Citizens' protest and request for a hearing should be dismissed for at least four reasons. First, it alleges no disputed issues of material fact, policy or law ripe for adjudication. Second, although the protests alleges managerial unfitness, the Citizens do not claim that KTNT will not follow applicable rules and regulations, nor could the Citizens make that claim in good faith. Third, the Citizens' protest is anticompetitive in that no other currently certificated IXC has been required not to request permission to use fictitious names. And fourth, in light of these three reasons, subjecting KTNT to a hearing would violate its right to due process of law. For these reasons, KTNT requests that the

ever complained to a regulatory commission about KTNT's marketing strategy. Unfortunately, in no appearance before the Commission, nor in any communication to the Commission, has either the Citizens or the Attorney General acknowledged that KTNT follows the law in Texas and that no one is complaining.

Commission dismiss the Citizens' protest and issue a final order granting KTNT/IDC Certificate number 4870.

Respectfully submitted this 28th day of October, 1997



Patrick K. Wiggins
Wiggins & Villacorta, P.A.
501 East Tennessee Street
Suite B
Post Office Drawer 1657
Tallahassee, Florida 32302
(850) 222-1534

Attorneys for KTNT
Communications d/b/a IDC
Telecommunications