

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application to Provide)
Interexchange Telecommunications)
Service by KTNT Communications,)
Inc., d/b/a I Don't Care and)
d/b/a It Doesn't Matter.)
_____)

DOCKET NO.: 970109-TI

FILED: April 17, 1998

ORIGINAL

KTNT COMMUNICATIONS, INC. D/B/A I DON'T CARE
AND D/B/A IT DOESN'T MATTER'S
REBUTTAL TESTIMONY OF DENNIS DEES

Chris Williams
AFA - 1
Legal - 2
LW St ag
SEC

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

1 Q. Please state your name, business address and job
2 title.

3 A. My name is Dennis Dees; my business address is 621
4 Ruth Drive, Kennedale, Texas 76060. I am employed by
5 KTNT Communications, Inc. as President.

6 Q. What are your present duties with KTNT?

7 A. I oversee the day-to-day operations of KTNT and design
8 the network for how calls will be routed through KTNT.

9 Q: Did you file direct testimony in this proceeding?

10 A: Yes. I filed direct testimony on behalf of KTNT on
11 February 12, 1998.

12 Q. What is the purpose of your testimony in this docket?

13 A. The purpose of my testimony is to respond to the
14 issues and factual assertions set out in the testimony
15 Mr. R. Earl Poucher filed by the Office of the Public
16 Counsel and the Citizens of Florida ("OPC").

17 Q. What is your basic reaction to Mr. Poucher's
18 testimony?

19 A. My basic reaction is disappointment. He states
20 unequivocally that our "basic marketing plan hinges
21 upon exploiting customers." (Page 2, Lines 15-16) He
22 also says that our motives are "directed primarily at
23 deceiving the public" (Page 2, Line 17) and then says
24 that a "company that intentionally engages in
25 deceptive trade practices ought not to be allowed to

1 operate in the State of Florida." (Page 2, Lines 18-
2 19) This portrayal of our company is simply not true.
3 I believe that the OPC's position can only be
4 maintained by ignoring the facts and distorting KTNT's
5 business plan.

6 Q: What do you mean by "ignoring the facts and distorting
7 KTNT's business plan?"

8 A: Let's take the OPC's concerns about the corporate name
9 KTNT. Mr. Poucher suggests that we intend to
10 "masquerade" as AT&T in the marketing of one plus
11 services because the names sound alike when spoken.
12 (Page 3, Line 25) He makes this claim even though I
13 explained at deposition that we chose the name because
14 two of the principals had a previous company named TNT
15 Communications, and we wanted to use "TNT" in the new
16 name. I am from Kennendale, so we took the "K" from
17 that word and added it to the "TNT."

18 Q: Did you do that to make your name sound like AT&T?

19 A: No. In fact, our first reaction was that our name
20 looked like a radio station.

21 Q: Do you like the name "KTNT?"

22 A: Not particularly. The main problem with the name is
23 that it gives folks like Mr. Poucher concerns that we
24 want to trick people.

25 Q: Why don't you change the name "KTNT?"

1 A: I suppose that the name hasn't created enough problems
2 for us to want to change it. To make the change we
3 have to change corporate registrations, billing
4 contracts and other documents, but these are not major
5 obstacles. We would be willing to change "KTNT" to
6 some other name that the OPC believes would not be
7 confusing to the public. I assume that with this
8 change, there would no longer be any concern about the
9 corporate name. However, this change would not
10 resolve the controversy over the fictitious names and
11 service marks "I Don't Care" and "It Doesn't Matter."

12 Q: Has Mr. Poucher distorted other aspects of your
13 business plan?

14 A: Yes. Perhaps the simplest way to say this is that I
15 think his basic premise is a distortion, i.e., that we
16 are out to trick and cheat the customer. I would like
17 to start with a more particular point, however. In
18 his testimony, Mr. Poucher seems to suggest that we
19 were attempting to ignore the fact that our primary
20 business plan involved zero minus traffic. This is a
21 misapprehension of my testimony and the record in this
22 proceeding. In our initial application for a
23 certificate, we represented to the Commission that our
24 business for the foreseeable future would be
25 exclusively zero-minus. Therefore the Commission did

1 not need to address in the certificate application the
2 area of telemarketing I Don't Care and It Doesn't
3 Matter for direct dialed long distance. Our business
4 plan has evolved somewhat. As reflected in my direct
5 testimony however we now contemplate moving into one
6 plus and other areas of telecommunications such as one
7 plus and 800-888 numbers as time permits.

8 Q: Let's turn to what appears to be Mr. Poucher's main
9 point. On page 4 at lines 9-12, he testifies in
10 pertinent part as follows:

11 The public interest is, indeed, best
12 served by encouraging competition.
13 However, the primary means for KTNT to
14 gain is 'market share' is not through
15 customers exercising competitive
16 choice, but by accident and deception.

17 How do you respond?

18 A: Mr. Poucher's testimony is inconsistent with how zero
19 minus carrier selection works when the customer
20 declines to make a choice. When the customer is asked
21 by the BellSouth operator which carrier he would like
22 to have handle the call and he responds "I Don't
23 Care," the BellSouth operator should respond to the
24 consumer that there is a carrier with that name and
25 then ask him if that is his choice. What is obvious

1 here is that we are not trying to tick the customer
2 into using our service, but rather we are attempting
3 to get his business by calling our name to his
4 attention. If we don't get his traffic, it will most
5 likely go to some other company with no name
6 recognition at the same rates. So what we are doing
7 is using our name to prompt the customer to make a
8 choice. Of course, we hope that he will find our
9 approach clever or amusing and choose us. But he
10 could say, for example, "Oh, just give me AT&T."

11 Q: Why don't you advertise or use some other less
12 controversial method of competing in the zero minus
13 market?

14 A: The nature of the zero-minus market requires
15 unorthodox marketing if you are going to compete for
16 the call, as opposed to just participate in a default
17 process.

18 Q: Why?

19 A: The zero minus market is small and would not support
20 traditional marketing techniques. In Florida, only
21 the three biggest companies with national one-plus
22 exposure provide zero minus services: AT&T, Sprint,
23 and MCI. The market is so small compared to the cost
24 of entry, that other companies with name recognition
25 simply skip participation in this line of business.

1 The only way to make any money in this market is to
2 use a marketing technique of some kind that does not
3 include high advertising costs. For example, another
4 company in the market, Connect America, operates under
5 five other names to increase its percentage of calls
6 it is assigned through default. Connect America is
7 not a company with name recognition and it doesn't
8 advertise. It simply gets business by being on the
9 rotation five times.

10 Q: But aren't you tricking the customer into using a
11 company that he doesn't know anything about?

12 A: Absolutely not. First, the customer has said that he
13 has no preference, so he does not care which carrier
14 ultimately provides the requested service. If the
15 customer does not care which carrier handles his call,
16 how can he be "tricked" into using a carrier? The
17 word "trick" suggests that had the customer known the
18 full story he would have selected another carrier.
19 Second, the customer who doesn't have a preference
20 gets a company that he doesn't know anything about,
21 unless one of the big three is at the top of the
22 rotation list. And third, we are not tricking the
23 customer, rather we are trying to prompt him to make
24 an affirmative choice.

25 Q: Are your rates an issue in this proceeding?

1 A: At the time of Mr. Poucher's testimony they were not
2 because all carriers on the rotation charged the same
3 rates, honoring the Commission's rate caps.
4 Nevertheless, before hearing we will file replacement
5 tariff pages lowering our rates for these calls.

6 Q: Why would you lower your rates if the customer's
7 decision to place the zero minus call is apparently
8 not price sensitive and all carriers currently charge
9 the same rates?

10 A: To demonstrate that opposition to our certificate and
11 zero minus strategy is not based on protecting the
12 customer. Now with lower rates we have the following
13 situation with respect to our provision of zero minus
14 service:

15 (1) the customer responds to the BellSouth
16 operator's inquiry of carrier preference by
17 saying either "I Don't Care" or "It Doesn't
18 Matter;"

19 (2) the customer either means to choose us or
20 means that he has no preference;

21 (3) the operator asks the customer to specify
22 his intent;

23 (4) if he means to choose us, he confirms that
24 choice; or, if he did not mean to choose us, he
25 states his current preference for how the call

1 is assigned, i.e., by name of the carrier or by
2 default; and

3 (5) if we carry the call, either by the
4 customer's choice or by default, the customer
5 pays a lower rate.

6 Based on the situation, the customer's choice is
7 honored at every turn and he ends up with lower rates.
8 I think this is in the public interest.

9 Q: But isn't this approach anticompetitive?

10 A: No. Ironically, I think the opposition to our
11 application by the OPC and Attorney General is
12 anticompetitive. If they have their way, AT&T, MCI
13 and Sprint's competitive interests will be served.
14 These three will benefit more than anyone.

15 Q: Isn't this approach at least unfair to other small
16 competitors?

17 A: No, and you don't hear them complaining about our
18 approach. In fact, I've been told by a couple of
19 competitors that they wish they had thought of the
20 idea.

21 Q: Don't your fictitious names create an opportunity for
22 confusion in the marketing of one-plus and other
23 services?

24 A: No. Under the current regulatory environment with
25 respect to slamming, it would be foolhardy for us to

1 market in a way that invited slamming complaints.
2 Obviously we will put effort and thought into
3 complying with the Commission's new slamming rules.
4 In addition, we will be using our unusual fictitious
5 names to distinguish ourselves from other carriers,
6 not confuse the customer that we are some one else.

7 Q: Mr. Poucher notes in his testimony that in Texas you
8 used 46 different names which he believes was ". . .
9 aimed at short-circuiting the process of transfer
10 services in that state." How do you respond?

11 A: This is another area where I believe he has ignored
12 facts and distorted our business plan. We did sponsor
13 or use 46 names in Texas, but at one point there were
14 more than a thousand names on the rotation list! This
15 rotation list has been narrowed quite a bit, but today
16 the number of names still exceeds one hundred. If you
17 expected any zero minus traffic by default you had to
18 have many names on the list. We were just one of many
19 to do that.

20 But it was within this context that we came up
21 with the strategy to "pop-up" our existence from among
22 the mass of unknown carriers waiting in line. We
23 experimented and used several different fictitious
24 names in Texas, but we have now narrowed our use of
25 fictitious names in Florida to just two: I Don't Care

1 and It Doesn't Matter.

2 And as Paul Harvey might say, "Here's the rest of
3 the story." In Texas and other states, we have
4 completed over 300,000 calls, and to the best of my
5 knowledge we have never had a single complaint about
6 our fictitious names, from either a customer or a
7 competitor. In addition, I don't think any regulatory
8 agency has ever suggested that we were not cooperative
9 and compliant with respect to applicable regulations.
10 In short, in states where we are providing service,
11 customers are not complaining, competitors are not
12 complaining, and regulators are not complaining. And
13 yet the OPC has insisted on forcing us to hearing to
14 contest our managerial fitness to provide service. I
15 think this process has been unfair to us.

16 Q: Turning to the issue of name confusion, Mr. Poucher
17 suggests on page 6 that the Commission has attempted
18 in the past "to insure that telephone customers are
19 provided clear and specific information to assist
20 customers in making informed judgments in the
21 selection of telecommunication services." (Page 6,
22 Lines 7-10) In addition, throughout his testimony,
23 Mr. Poucher suggests that the two fictitious names are
24 either confusing or could be used to deceive
25 customers. How do you respond?

1 A: I am sure the Commission has put a lot effort into
2 assuring that consumers are protected in their
3 exercise of choice, and, as I have already explained,
4 I see our service as honoring choice. But with
5 respect to either corporate or fictitious names, it
6 seems to me that other companies are currently
7 providing service under other names that could be more
8 confusing than "I Don't Care" and "It Doesn't Matter"
9 in some contexts. For example, there are:

- 10 . The Other Phone Company, Inc.
- 11 . The Phone Company
- 12 . Dial & Save
- 13 . Florida Public Telecommunications Association,
14 Inc.
- 15 . Budget Call Long Distance, Inc.
- 16 . Business Discount Plan, Inc.
- 17 . Hometown Telephone, Inc.
- 18 . Long Distance Savers, Inc.
- 19 . A Quality Communication Services

20 I suppose we could all create hypothetical situations
21 where a consumer might be confused by these names.

22 But if there is truly concern about confusion
23 among names in the market place, the Commission should
24 recognize there are many carriers competing under
25 names that could be confusingly similar to the

1 consumer. Attached as Exhibit (DD-1) is a list of
2 resellers with names that are arguably confusingly
3 similar.

4 As an example of potential confusion, let's
5 assume that within one week a customer received
6 telephone calls from marketing agents for any two of
7 the following carriers:

- 8 . TEL-LINK
- 9 . Tel3
- 10 . Telcom.Net, Inc.
- 11 . Telcorp Ltd.Company
- 12 . TeleCard Communications International, Inc.,
- 13 . Telecom*USA
- 14 . Teleglobe USAInc.
- 15 . TeleHub Network Services Corporation
- 16 . Telenational Communications Limited
- 17 . Telstar Long Distance, Inc.

18 I think it highly unlikely that the average consumer
19 would know the difference between the companies, and
20 would likely be confused that the second call was a
21 follow-up.

22 Q: Mr. Poucher suggests that in the future you might
23 attempt to use other fictitious names in Florida. How
24 do you respond?

25 A: I do not understand how this can be a serious

1 objection to our receiving a certificate. Any
2 existing certificated carrier could do the same thing.
3 I had the same problem with OPC's protest to the grant
4 of a certificate.

5 Q: Please explain.

6 A: Our original application was filed on January 24,
7 1997, and included the use of the fictitious names.
8 In its recommendation dated August 6, 1997, the staff
9 recommended approval of our application as filed. At
10 agenda conference without any prior contact with us
11 the Attorney General's office objected to our being
12 certificated. The Commission deferred the item to
13 give everyone a chance to meet and possibly resolve
14 our differences.

15 When it became clear to us that the OPC and the
16 Attorney General would not agree to us using our
17 fictitious names in Florida, we decided to amend our
18 application. On June 19, 1997, our counsel wrote Mr.
19 Williams asking that certification be granted in the
20 name "KTNT Communications, Inc. d/b/a IDC
21 Telecommunications." Staff recommended approval of
22 this and PAA Order No. PSC-97-1060-FOF-TL was issued
23 on September 9, 1997, proposing the grant. There was
24 a specific condition in the proposed order that we
25 would not use the controversial fictitious names

1 unless we obtained prior approval from the Commission.

2 The OPC protested the proposed grant forcing us
3 into this hearing over names we said we would not use.
4 OPC's concern was apparently the same as the one Mr.
5 Poucher mentions in his testimony: someday we might
6 try to use names they don't like, even though we would
7 have to obtain regulatory approval first.

8 Q: To be clear, in what names are you asking that the
9 certificate be granted?

10 A: Because we have been forced to hearing, we would
11 revert to our original application. Specifically, we
12 would like the certificate to be granted under the
13 names "KTNT Communications, Inc. d/b/a I Don't Care"
14 and "KTNT Communications, Inc. d/b/a I Don't Know."

15 Q: Please summarize your rebuttal testimony.

16 A: Mr. Poucher in his testimony argues that our
17 fictitious names are incompatible with the public
18 interest and that we are not fit to be certificated.
19 I disagree.

20 We know that our names are controversial. As I
21 have said publicly before, some people love them and
22 some people don't. But the OPC is basically saying
23 that we are out to cheat people, and that simply is
24 not true. In the zero minus environment we have
25 created a clever name that pops us into the customer's

1 attention. This leads the customer to make an
2 affirmative choice, which may or may not be us. In
3 other markets such as one plus, our names are so
4 distinctive that we will also stand out from the
5 competition.

6 The OPC suggests that we are tricking customers
7 and unfairly competing with other carriers, large and
8 small. But only the OPC and the Attorney General seem
9 to be saying that. To repeat what I said earlier,
10 customers are not complaining, competitors are not
11 complaining, and regulators are not complaining.

12 We applied for our certificate over a year ago.
13 Staff has recommended twice that we be granted a
14 certificate and we have shown by our conduct in this
15 proceeding that we attempt to honor regulatory policy.
16 We have established that we have the technical,
17 managerial, and financial fitness to be certificated.
18 We therefore request that the Commission grant our
19 certificate as soon as possible.

20 Q. Does this conclude your rebuttal testimony?

21 A. Yes it does.

22

23

24

25

Telecommunications Companies: Reseller

A Quality Communication Services

ACC Long Distance
Access Long Distance of Florida, Inc.
Access Network Services, Inc.
ACSI Local Switched Services, Inc.

American Long Lines, Inc.
American MetroComm Long Distance Corporation
AmericaTel Corporation
Amerivision Communications, Inc.

ATC Long Distance
ATI Telecom, Inc.
Atlantic Telecommunication Systems, Inc.
AT&T Communications of the Southern States, Inc.

Budget Call Long Distance, Inc.
Business Discount Plan, Inc.

Coast International, Inc.
Communication Network Solutions, L.L.C.
COMNEX

Datacomm International Company LTD.
DebitCom, Inc.
Deltacom Long Distance Services, Inc.

Dial & Save

Digital Network Operator Services, Inc.
Digital Services Corporation
Direct Net Telecommunications

Frontier Communications International, Inc.
Frontier Communications Services

Global Access Communications, Inc.
Global Paycom, Inc.
Global Tel*Link Corporation
Globalplex Telecom & Technologies, Inc.
Globe National Telecommunications, Inc.

GT Com Long Distance
GTS

Gulf Communication Services, Inc.

Gulf Long Distance, Inc.

Hometown Telephone, Inc.

International Digital Telecommunications Systems, Inc.

International Marketing & Advertising, Inc.

International Telemedia Associates, Inc.

Interstate FiberNet, Inc.

ISN Communications

IXNET, LTD. CO.

K & S International Communications, Inc.

KMC Telecom Inc.

LCI International Telecom Corp.

Legacy Long Distance International, Inc.

Long Distance Savers, Inc.

National Data & Communications, Inc.

NationalTel

MCI

NTI

OCI

Quest Telecommunications, Inc.

Qwest Communications the Power of Connections, Inc.

Satcom Systems, Inc.

Satel (Satellite Communications Systems, Inc. d/b/a)

SecurFone America, Inc.

Security Telecom Corporation

Star National Enterprises, Inc.

STAR Telecommunications, Inc.

Starlink Communications, LLC

TEL-LINK of Florida, L.L.C.

Tel3

Telcom.Net, Inc.

Telcorp Ltd. Company

TeleCard Communications International, Inc.

Telecom*USA or Teleconnect (SouthernNet, Inc., d/b/a)

Teleglobe USA Inc.

TeleHub Network Services Corporation

Telerational Communications Limited

Teligent, Inc.

Telstar Long Distance, Inc.

TransGlobal Communication Enterprises, Inc.

Transtel Communications of Northern Florida, Inc.

UCN, Inc. (Universal Communications Network, Inc. d/b/a)

United Services Telephone, LLC
US LEC of Florida, Inc.
US Xchange of Florida, L.L.C.
USA Tele Corp.

ValNet Communications, L.L.C.
VarTec Telecom and Clear Choice Communications

World Access Communications Corp.
World Long Distance, Inc.
World Pass Communication Corp.
World-Link, Inc.
WorldTouch Telecom, Inc.

XIEX Telecommunications, Inc.
Zenex Long Distance, Inc.

CERTIFICATE OF SERVICE

Docket No. 970109-TI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery* or U.S. Mail this 17th day of April 1998, to the following:

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