



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

M-E-M-O-R-A-N-D-U-M

DATE: NOVEMBER 5, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF COMMUNICATIONS (KENNEDY) *REK*
 DIVISION OF LEGAL SERVICES (MCKINNEY) *MB*
 DIVISION OF AUDITING AND FINANCIAL ANALYSIS (LESTER) *ALM*

RE: DOCKET NO. 981094-TX - APPLICATION FOR CERTIFICATE TO PROVIDE ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE BY TALLAHASSEE TELEPHONE EXCHANGE, INC.

AGENDA: 11/17/98 - REGULAR AGENDA - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981094.RCM

CASE BACKGROUND

On September 2, 1998, Tallahassee Telephone Exchange, Inc. submitted an application to obtain a certificate of public convenience and necessity to provide alternative local exchange service within Florida.

On September 10, 1998, staff contacted Mr. Gary S. Brinkworth, Manager, Utility Business and Customer Services, with the City of Tallahassee to inform the City of the application. On September 15, 1998, staff received correspondence from the City outlining its objections to the use of the corporate name Tallahassee Telephone Exchange, Inc. (Attachment A). In its letter the City asserted that the name may create an identity problem that would adversely affect the City. The City stated that if Tallahassee Telephone Exchange, Inc. should prove to be an unreliable provider in the future, confusion caused by the corporate name might result in an

adverse customer service reputation associated with the City's services or other business ventures.

On September 15, 1998, staff informed the company of the City's objections to its use of the corporate name Tallahassee Telephone Exchange, Inc. On October 27, 1998, the company sent a letter to staff responding to the City's concerns and stating its intention to continue the application process using the corporate name Tallahassee Telephone Exchange, Inc. (Attachment B).

Staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Tallahassee Telephone Exchange, Inc. a certificate of public convenience and necessity to provide alternative local exchange service in Florida?

RECOMMENDATION: Yes. Tallahassee Telephone Exchange, Inc. has demonstrated that it has the technical, financial and managerial capability to provide alternative local exchange telecommunications service in Florida. There is no basis to deny Tallahassee Telephone Exchange, Inc.'s application. Tallahassee Telephone Exchange, Inc. should be granted certificate no. 5763 to provide alternative local exchange telecommunications service in Florida. **(Kennedy)**

STAFF ANALYSIS: On August 31, 1998, the Florida Secretary of State approved Tallahassee Telephone Exchange, Inc. as a registered corporation in Document No. P98000075565 (Attachment C). On January 13, 1998, the City of Tallahassee was issued a certificate of public convenience and necessity, under the name City of Tallahassee, to provide alternative local exchange service in Florida. Currently, however, the City does not offer alternative local exchange services, and it has not registered or used a corporate name similar to Tallahassee Telephone Exchange, Inc.'s name. It only alleges that it may do so in the future.

Staff believes that the City's speculation that it may want to use a name that may conflict somehow with the applicant's name is insufficient grounds to deny the application. In fact, if at some future point the City does attempt to use a name similar to the name in question here, the company might rightfully object, since it is the one that has registered the name with the Secretary of State. As it is, the only similarity between the certificated name

DOCKET NO. 981094-IX
DATE: NOVEMBER 5, 1998

"City of Tallahassee" and the name "Tallahassee Telephone Exchange, Inc." is that they both use the name "Tallahassee." Many businesses include the word "Tallahassee" in their name. The City does not have an exclusive right to its use. For these reasons, and because the applicant has adequately demonstrated that it has the technical, financial, and managerial capability to provide service, as Section 364.337, Florida Statutes requires, staff recommends that the certificate should be granted.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final and this docket may be closed. (McKinney)

STAFF ANALYSIS: If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final and this docket may be closed.



CITY HALL
300 S. ADAMS ST
TALLAHASSEE, FL
32301-1731
850/891-0010
TDD 1-800/955-8771

SCOTT MADDOX
Mayor
JOHN PAUL BAILEY
Mayor Pro Tem

CHARLES E. BILLINGS
Commissioner
DEBBIE LIGHTSEY
Commissioner
STEVE MEBBURG
Commissioner

ANITA R. FAVORS
City Manager
ROBERT B. INZER
City Treasurer-Clerk

JAMES R. ENGLISH
City Attorney
RICARDO FERNANDEZ
City Auditor

VIA FACSIMILE 850/413.6585

September 15, 1998

RECEIVED

SEP 17 1998

CSU

Mr. Ray E. Kennedy
Certification and Compliance Section
Division of Communications
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket No. 981094-TX: Application for certification to provide alternative local exchange telecommunications service d/b/a Tallahassee Telephone Exchange, Inc.

Dear Mr. Kennedy:

This letter is in response to our conversation on September 10th regarding the application you have received from a business seeking to use the fictitious name Tallahassee Telephone Exchange, Inc. to provide telecommunications services as an ALEC in Florida.

As we discussed, the city has recently changed its business strategy relative to telecommunications. As a result of that change, we do not plan at this time to offer telecommunications services, such as local telephone service, in our market area. We do have a continuing interest in developing a telecommunications strategy for the city, and part of that strategy may involve new business ventures in our market area. In addition, the city has been in the utility business for over 95 years, and we are proud of our service record and the reputation we have earned with our customers over that time. As our utility markets change with changing regulatory or legislative action, the city may find itself operating separate business units to provide utility services to our customers. Those business units will need to maintain the brand recognition and customer service reputation of the city, and that could require that we use a business title that could be very similar to the name proposed for this telecommunications service provider.

As a result, we have a concern that this new provider, if operating in our area under the fictitious name Tallahassee Telephone Exchange, Inc., may create an identity problem that would lead to adverse impacts for the city. Should that business prove an unreliable provider at some time in the future, the confusion caused by the name for their telephone "utility" operations might easily result in an adverse customer service reputation to be associated with the city's services or other business ventures.

RE: Docket No. 981094-TX: Application for certification to provide alternative local exchange telecommunications service d/b/a Tallahassee Telephone Exchange, Inc.
September 15, 1998
Page 2

To avoid that situation, we feel it is in the best interest of the city for this new telecommunications provider to select another name for their ALEC operations in Florida, and do formally object to their choice of the fictitious name Tallahassee Telephone Exchange, Inc.

Please let me know if you need additional information to satisfy the Commission inquiry relative to this docket.

Sincerely,



Gary S. Brinkworth
Manager, Utility Business & Customer Services

cc:
Rick Fernandez
Jim English
Telecommunications Steering Committee Members

10/27/1998 16:18 8500782189

1ST, INC.

PAGE 01

October 27, 1998

Tallahassee Telephone Exchange, Inc.
P.O. Box 11043
Tallahassee, FL 32302
Tel. 850-677-2128
Fax 850-678-2109

Florida Public Service Commission
Communications Division
C/O Mr. Ray Kennedy
2940 Shawwood Oak Blvd.
Tallahassee, FL 32399-6600

Re: Trade Name

Dear Mr. Kennedy:

This is in response to the objection raised by the City of Tallahassee (City) to my registration with the name of Tallahassee Telephone Exchange, Inc. First of all, I apologize for the delay in getting this to you. I was in travel status, on several occasions, since we utilized last which made those past several weeks very hectic.

You have indicated that the City has filed an objection to the use of the name Tallahassee Telephone Exchange, Inc. (TTE). It is my understanding from talking to the Assistant City Manager that he feels that the use of "Tallahassee Telephone" is the organization's name and that any other name would be confusing to the public. I am sure that the City is correct, and that there was the possibility of negative growth connections may call the City in error, and that there was the possibility of negative growth connections according to the City at some later point in time which the City would like to avoid. I understand there is a letter to that general effect in your file.

My concerns are as follows:

1. I have spent some time and effort and certain amount of costs in conjunction with the name Tallahassee Telephone Exchange, Inc. Filing the articles of incorporation with the Secretary of State is only a small part of the importance of the name Tallahassee Telephone Exchange. I have registered the name with the InternetC (the organization responsible for assigning domains names on the Internet) with an associated domain name of "ta.net". There have already been several domain names for very long time ago, such that to be able to find one that can be used to descriptively fit the business you are in.
2. It is very important for me from a marketing standpoint to use TTE as the acronym for this business, as business will be almost the exclusive needs for advertising Tallahassee Telephone Exchange is the most logical and descriptive name to fit the activities of this business. I consider this to be another important factor from a marketing perspective.

10/27/1998 16:10

6588782169

IST, INC.

PAGE 02

3. Neither the PSC nor the City of Tallahassee have been able to give me any specific legal basis for objecting to the name Tallahassee Telephone Exchange, Inc. I have performed some research for my own edification as I fully intended to change the corporation's name rather than risk delaying registration, but could find absolutely no precedent which fit the facts of my particular situation. Here is some the salient information as to why I do not believe there is such a legal precedent, and why there are no such court cases which are on point.
- a. Geographical and common descriptive terms can not be registered as trade names or service marks, FE 495.021. The names "Tallahassee" and "Telephone" can not be protected through either the State or Federal registration process.
 - b. Most cases involving service mark disputes concern registered names under the Lanham Act of 1946, or registered in the respective state in which the business operates. The words "Tallahassee" and "Telephone" can not be protected under state nor Federal law, because they are not sufficiently distinctive.
 - c. FE 495.151 & 495.141 contemplate damages for infringement of service marks based on advertising of the prior user, and dilution of the distinctive business mark, and damage to the reputation of an existing business. This is in contradiction to the City's posture of not being in business, not having any goodwill from building a reputation in the industry, and not having the benefit of their advertising dollars being diluted by a competitor reaping that advantage by having a similar name.
 - d. Common factors used in deciding this type in court cases are:
 - Strength of trade mark name - is it registered and how long has the company used it in its business
 - Proximity to services - do the two businesses offer the same services
 - Similarity of names -
 - Evidence of actual confusion -
 - Marketing channels used -
 - Likely degree of purchaser care -
 - Intent in selecting name -
 - Likelihood of expansion -However, all such cases presume active businesses and/or registered service marks, which is not the case here.
 - e. I have noticed that there are quite a few other registrations approved by the PSC with both a city name and "Telephone" in their corporate name, including "Tallahassee Memorial Telephone Co."

I am always willing to change my mind and of course my filing, if there is any law or persuasive argument that I am overlooking please let me know and I will do what is necessary to remedy it.

If anything further is needed, please feel free to contact me at the address or telephone number captioned above.

Sincerely,



Eric R. Larson, President
Tallahassee Telephone Exchange, Inc.

Florida Division of Corporations Public Access	Corporate Inquiry Menu: Please select an inquiry type from the list below, then enter a search key in the search field. Press SEARCH to begin the search.
Inquiry by: <input type="radio"/> Corporation / Trademark Name <input type="radio"/> Officer / Registered Agent Name <input type="radio"/> Registered Agent Name <input type="radio"/> Trademark Owner Name <input type="radio"/> FEI Number <input type="radio"/> Document Number <input type="radio"/> Trademark Name Search String: <input type="text"/>	10/27/98 CORPORATE DETAIL RECORD SCREEN NUM: P98000075565 ST:FL ACTIVE/FL PROFIT FLD: 08/31/1998 NAME : TALLAHASSEE TELEPHONE EXCHANGE, INC. PRINCIPAL: 1112 CARISSA DR. ADDRESS TALLAHASSEE, FL 32308 RA NAME : LARSEN, ERIC R RA ADDR : 1112 CARISSA DR. TALLAHASSEE, FL 32308 ANN REP : * NONE FILED *
<input type="button" value="Search"/>	<input type="text"/>
<input type="button" value="HomePage"/>	 ----- THIS IS NOT OFFICIAL RECORD; SEE DOCUMENTS IF QUESTION OR CONFLICT ----- Document Image

8:18 AM

ATTACHMENT C
DOCKET NO. 981094-TX
November 5, 1998