

ORIGINAL

KATZ, KUTTER, HAIGLER, ALDERMAN, BRYANT & YON

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS AT LAW

www.katzlaw.com

Orlando Office

Suite 900
111 North Orange Avenue
ORLANDO, FL 32801
(407) 841-7100
fax (407) 648-0660

Tallahassee Office

12th Floor
106 East College Avenue
TALLAHASSEE, FL 32301
(850) 224-9634
fax (850) 222-0103

Miami Office

Suite 409
2999 NE 191st Street
AVENTURA, FL 33180
(305) 932-0996
fax (305) 932-0972

Washington, DC Office

Suite 750
801 Pennsylvania Avenue, NW
WASHINGTON, D.C. 20004
(202) 393-1132
fax (202) 624-0659

June 12, 2001

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: 010591-TI Cancellation by Florida Public Service Commission of IXC Certificate NO. 2497 issued to AmeriVision Communications, Inc. for violation of Order No. PSC-00-0827-PAA-TI

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of Amerivision's Petition for Evidentiary Hearing and Memorandum in Opposition to Cancellation of its IXC Certificate No. 2497, which we ask that you file in the above-captioned matter.

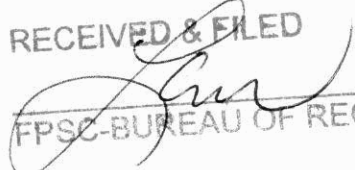
A copy of this letter, together with an addressed and postage-bearing envelope is enclosed. Please mark it to indicate that the original was filed and return the copy to me.

Sincerely,

for 
Patrick K. Wiggins

/pk

- APP _____
- CAF _____
- CMP _____
- COM _____
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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07267 JUN 12 2001

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida Public) DOCKET NO.: 010591-TI
Service Commission of IXC Certificate)
No. 2497 issued to AmeriVision) FILED: June 12, 2001
Communications, Inc. for violation of)
Order No. PSC-00-0827-PAA-TI)
_____)

**AMERIVISION'S PETITION FOR EVIDENTIARY HEARING AND
MEMORANDUM IN OPPOSITION TO
CANCELLATION OF ITS IXC CERTIFICATE NO. 2497**

AMERIVISION COMMUNICATIONS, INC. ("AmeriVision"), pursuant to Rule 28.106.201, Florida Administrative Code, hereby files its Petition for Evidentiary Hearing and Memorandum in Opposition to Cancellation of Its IXC Certificate No. 2497 in response to Order No. PSC-01-1170-PAA-TI, Notice of Proposed Agency Action Order Canceling Certificate ("Order Proposing Cancellation") for violation of Order No. PSC-00-0827-PAA-TI ("Order Denying Designation"), in which the Commission denied the request of AmeriVision to change its name.

I. GENERAL DENIAL

AmeriVision has neither disregarded nor violated any Commission Rule or Order

1. AmeriVision states that it has neither disregarded nor violated any applicable statutory provision, Commission rule, or order, including the Order Denying Designation. Nothing in the Order Denying Designation, which simply denied AmeriVision's request for a "d/b/a" designation on its certificate, prohibited or could lawfully prohibit AmeriVision's continued use of its service mark "LifeLine Communications."

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FPSC-RECORDS/REPORTING

2. In the Order Proposing Cancellation, in which the Commission proposed to cancel Amerivision's Interexchange Telecommunications Certificate ("IXC") No. 2497, the Commission stated that AmeriVision has demonstrated a total disregard of its Order Denying Designation. [Order Proposing Cancellation, p. 3] This language suggests a misapprehension of (1) AmeriVision's purpose in requesting the name change; (2) the Commission's authority with regard to service marks; and (3) AmeriVision's exemplary record of regulatory compliance. As a result, the Commission has, through its Order Proposing Cancellation, not only proposed the draconian measure of certificate cancellation, but it also has unjustifiably tainted AmeriVision as a non-compliant and irresponsible carrier. As a company that markets to churches and faith-based organizations, the resulting embarrassment is especially unfair.

AmeriVision's purpose in requesting the name change

3. The Commission misapprehends that in Docket No. 000153-TI AmeriVision requested the Commission's permission to continue to use its service mark in Florida. Rather, AmeriVision's request for a name change on IXC Certificate No. 2497 was for the sole purpose of facilitating the Commission's regulatory oversight by recognizing the company's service mark as a fictitious name, *i.e.*, a "d/b/a." Because service marks identify a company's products in the market place, customers who wish to communicate with the Commission about AmeriVision might refer to the company by "Lifeline." AmeriVision uses the "Lifeline" service mark on a nationwide basis.

AmeriVision's self-initiated request for the name change was a constructive, forward-looking step in compliance with the Commission rules.¹

The Commission misapprehends its authority in regard to service marks

4. AmeriVision has used "Lifeline" as a service mark both in Florida and outside of Florida since at least 1988. This mark is fully protected under both the common law and the Trademark Act of 1946 ("Lanham Trade-Mark Act"). As such, no further action was or is required for AmeriVision to use its mark in Florida. Thus, in requesting this name change AmeriVision was *not* seeking permission from the Commission to continue the use of its service mark nor is such an action appropriate under Florida law.

5. Moreover, the Commission has cited no statute, rule, or order that purports to establish Commission authority to regulate or otherwise infringe upon AmeriVision's right to use its service mark and to engage in constitutionally protected commercial free speech.

AmeriVision's exemplary record of regulatory compliance

6. The Commission is aware that AmeriVision has provided trouble-free service within Florida for more than 12 years. Indeed, the Commission's own records reflect that during the year 2001, AmeriVision received only one complaint. The Commission has never had any problem with AmeriVision. Unfortunately, the Commission does not discuss this or any other information that reflects favorably upon AmeriVision. In sum, the Commission is informed of AmeriVision's exemplary record with respect to complaints and regulatory compliance, yet it omits this relevant

¹ The Commission appears to attach some significance to AmeriVision's decision not to protest the Order Denying Designation. This significance is misplaced. The Order Denying Designation simply maintained the status quo and in effect, was a non-event.

information in its Order Proposing Cancellation. This distorts both the facts and the nature of AmeriVision's attitude toward regulatory compliance.

II. SPECIFIC DENIALS AND AFFIRMATIVE DEFENSES

7. Under Section 364.285, Florida Statutes, the Commission's authority to impose penalties is limited to situations in which a carrier has refused to comply with or has willfully violated a lawful rule, order, or provision of Chapter 364. AmeriVision has neither refused to comply with nor willfully violated any rule or order of the Commission.

8. For the reasons stated in Paragraph 5, the allegations of the Order Proposing Cancellation are insufficient to place AmeriVision on notice of the charges against it.

9. The action contemplated by the Commission is an invalid exercise of delegated legislative authority in that it is arbitrary, capricious, and discriminatory.

10. The Commission's penalty is excessive given there is no harm caused by AmeriVision's lawful use of its service mark.

11. The Commission's action is an unconstitutional infringement of AmeriVision's right to commercial free speech.

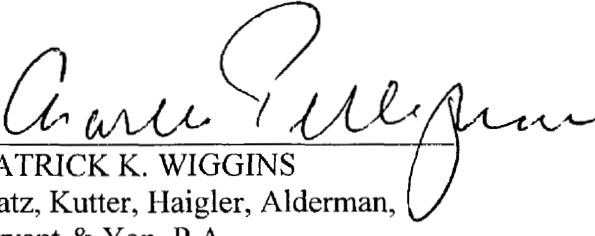
12. The Commission's proposed agency action is an impermissible infringement of AmeriVision's statutory right to the lawful use of its service mark.

13. The Commission's proposed agency action advances an unlawful rule with respect to the relationship between the business name on the certificate and a company's right to use its service marks to engage in constitutionally protected commercial free speech.

III. CONCLUSION

BASED ON THE FOREGOING, AmeriVision Communications, Inc. respectfully requests an evidentiary hearing pursuant to section 120.57, Florida Statutes, for the purpose of determining whether evidence exists to support the Commission's contention that AmeriVision Communications, Inc., willfully violated a lawful rule or order of the Commission or provision of Chapter 364, Florida Statutes, within the meaning of section 364.285, Florida Statutes.

RESPECTFULLY SUBMITTED this 12th day of June 2001.

for 

PATRICK K. WIGGINS
Katz, Kutter, Haigler, Alderman,
Bryant & Yon, P.A.
106 E. College Avenue
Suite 1200
Tallahassee, Florida 32301
Telephone (850) 224-9634
Facsimile (850) 222-0103

Attorney for

AMERIVISION COMMUNICATIONS, INC.
480 McLaws Circle, Suite 225
Williamsburg, Virginia 23185