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Reply to Tallahassee

November 1, 2001

VIA HAND DELIVERY

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

RECEIVED-FPSC
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COMMISSION
CLERK

Re: Docket No. 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:

AmeriVision Communications, Inc. ("AmeriVision"), hereby files its proposed settlement of Order No. PSC-01-1170-PAA-TI, Notice of Proposed Agency Action and Order Canceling Certificate ("Order Proposing Cancellation") issued on May 23, 2001, for an alleged violation of Order No. PSC-00-0827-PAA-TI ("Order Regarding Name"). In the Order Regarding Name the Commission purports to deny an alleged request by AmeriVision to amend its certificate to include its fictitious name "LifeLine Communications."

Introduction

The Commission proposes in this proceeding to cancel AmeriVision's IXC certificate. According to the Order Proposing Cancellation, this sanction is justified because of the Company's alleged "total disregard" of the Order Regarding Name. Commission's view of the case appears to be basically this: AmeriVision knew it needed permission to operate under the name LifeLine Communications, asked for permission, was denied, and used the name anyway.

AmeriVision regrets that the Commission has this view, but nevertheless cannot acquiesce in the Commission's allegations. AmeriVision has not knowingly disregarded or violated any applicable statutory provision, Commission rule, or order, including the Order Regarding Name. AmeriVision has an exemplary record of regulatory compliance,

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Ms. Blanca Bayo
November 1, 2001
Page 2

providing trouble-free service within Florida for more than 12 years. The Company's complaint level has been remarkably low and the Commission has never before had any problem with AmeriVision. This particular dispute is an anomaly that results not from a disregard of applicable regulations but from an unfortunate combination of miscommunication and misapprehensions.

AmeriVision Established Use of the "LifeLine" Service Mark in Marketing to Churches and Faith-Based Organizations

AmeriVision markets to churches and faith-based organizations under the service mark "LifeLine Communications." 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 Trademark Act"). As such, no further action was or is required for AmeriVision to use its mark in Florida. To reiterate, AmeriVision requires no permission from the Commission to continue the use of its service mark, nor is it appropriate under Florida law for AmeriVision to request such permission. The Order Proposing Cancellation recognizes that AmeriVision uses LifeLine properly as a service mark.

AmeriVision's Decision to Use Its Service Mark as a Fictitious Business Name

In late 1999, AmeriVision began a national media campaign to promote further product identification under its service mark. To reinforce its service mark, AmeriVision registered LifeLine Communications as a *fictitious name* (i.e., a "d/b/a") in over 40 states, including Florida. In Florida, AmeriVision successfully registered with the Secretary of State as the fictitious name "LifeLine Communications." In good faith, it believed its next step was not to amend the *business* name on its certificate, but rather to add the "d/b/a" to the label on its tariff. This is indeed how the fictitious names are registered in some other states (Georgia, for example). Thus, on February 3, 2000, AmeriVision filed a 31-page tariff revision with the Florida Commission (the d/b/a was added to every page of the existing tariff). A copy of the transmittal letter is Attachment 1 to this letter.

AmeriVision's records contain no reference or documents with respect to the Commission's treatment of the February 3rd filing. Based on undersigned counsel's investigation, however, here is what happened. The tariff was designated Tariff No. T-000188. Under Commission policy, the tariff could not be approved because the d/b/a was not reflected on the Company's certificate. Moreover, staff was not authorized to administratively deny the tariff revision. Thus the tariff had to be taken to the Commission for review, which meant staff had to open a docket on the filing.

Staff opened Docket No. 000153-TI on February 6, 2000. Rather than open the docket in response to a requested tariff revision (i.e., a request to add the d/b/a to the tariff), the docket was opened as a response to a request to amend the Company's certificate. This,

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Page 3

however, was a request the Company never made. In other words, the Commission sua sponte converted a tariff filing into a request to amend a certificate of public convenience and necessity.

On information and belief, this elevation of the tariff filing was done in good faith to facilitate AmeriVision's efforts and to avoid unnecessary filings. Staff recommended approval of the name change. Had the Commission granted staff's recommendation, the tariff revision would have been approved. In retrospect, it would have been more useful had staff framed its recommendation differently. Specifically, it would have been more useful if the staff had recommended that the Commission sua sponte treat the tariff filing as a request to add the d/b/a to its certificate and that the Commission grant that request. Under this approach however, if the Commission had not been inclined to approve adding the d/b/a, it would have denied the tariff. This approach would have allowed AmeriVision to later file a request for a name change, along with information and justification addressing the Commission's concerns.

Unfortunately, the sua sponte conversion of the tariff filing into a certificate amendment was neither AmeriVision's intention nor consistent with its implementation plan. Moreover, it was apparently done without effective notice to the Company. AmeriVision's plan was to move forward only with those states where approval was provided automatically or without regulatory concern. For all other states AmeriVision intended to delay use of the fictitious name until it had implemented the changes elsewhere. Thus, as soon as AmeriVision learned that the Florida Public Service Commission might have concerns about the use of its service mark, AmeriVision decided not to use the fictitious name in Florida for intrastate service.

On information and belief, AmeriVision first learned about the Commission's concerns when it filed later a substantive tariff revision on March 23, 2001 (T-000464). The transmittal letter is Attachment 2. This tariff included the d/b/a in the Company's name. Staff informed AmeriVision's tariff agent that the Commission might have problems with the name "LifeLine." On March 29, 2001, the tariff agent filed its letter withdrawing T-000464 (Attachment 3). As is explained in the letter: "This was filed in error, as the Company is not using a d/b/a name in Florida." The Company was in the process of filing products and product changes throughout the nation and the next week another tariff filing (T-000494) was made with the Commission that also erroneously included the d/b/a. This filing was quickly withdrawn by letter dated April 5, 2000, which is Attachment 4.

AmeriVision did not consider the withdrawal of the tariffs a reversal. AmeriVision had made similar filings in more than 40 other states and the overwhelming majority had approved or were approving routinely the use of the fictitious name. To reiterate, AmeriVision's plan was to focus on implementation of the changes where there was approval and *to delay implementation* where approval had not been promptly given. This is exactly what AmeriVision did in Florida.

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The Mistake in AmeriVision's Billing

During this time, AmeriVision was unaware that its February 3rd tariff filing had been converted to a request to amend its certificate. On the contrary, it was proceeding on the basis that it had withdrawn all of its requests concerning the use of its service mark as a fictitious name. Moreover, it fully intended not to use its service mark as a d/b/a within Florida. Unfortunately, during the first quarter of 2001, this use did occur in its billing of customers.

Despite AmeriVision's specific instructions to the contrary, its billing company sent bills to Florida customers under the fictitious name "LifeLine Communications," without reference to AmeriVision. From the Commission's perspective, this billing error may have suggested a disregard for the Order Regarding Name, but this was not the case. On information and belief, the billing agent's failure to bill under the correct name was a programming error and was not willful or intentional. Although the billing error was both contrary to its instructions and apparently inadvertent, AmeriVision nevertheless recognizes that billing its customers for Florida intrastate service without the name "AmeriVision" on the bill amounts to a violation of Commission rules. AmeriVision accepts responsibility for this unintentional violation.

Order No. PSC-00-0827-PAA-TI ("Order Regarding Name")

On April 26, 2000 – some four weeks after AmeriVision had withdrawn Tariffs T-000464 and T-000494 - the Commission issued as proposed agency action its Order Regarding Name. This order provides the following statement of the jurisdictional basis for the Commission's action affecting AmeriVision's substantial interests:

By letter dated February 3, 2000, AmeriVision Communications, Inc., holder of Interexchange Telecommunications Certificate of Public Convenience and Necessity No. 2497, requested that Certificate No. 2497 be amended to reflect a name change from AmeriVision Communications, Inc. to AmeriVision Communications, Inc. d/b/a LifeLine Communications.

As reflected earlier in this letter, the Commission's Order Regarding Name is based on a fundamental misapprehension. To reiterate, the letter dated February 3, 2000, did not request that AmeriVision's certificate be amended. Rather the letter merely transmitted the tariff amendment. Moreover, on information and belief, AmeriVision received no notice of this docket being opened or of the Commission's intention to treat the transmittal letter as a request to amend AmeriVision's certificate.

The Order Regarding Name was intended to give AmeriVision the opportunity to explain why use of its fictitious name would not contravene the public interest. The PAA order was reviewed by AmeriVision's regulatory manager who is not an attorney. Because

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AmeriVision had withdrawn its tariff filings and had taken no other action, the regulatory manager mistakenly read the PAA order as maintaining AmeriVision's status quo as opposed to denying a request that was never made. In other words, AmeriVision was not even aware that it had a dispute with the Commission at this time and it never occurred to the Company to protest the PAA.

AmeriVision proceeded with its national advertising campaign. On information and belief, the Commission became aware of the AmeriVision's use of the service mark "LifeLine Communications", in its marketing as well as the billing mistake. As reflected in the Order Proposing Cancellation, the Commission viewed this marketing activity and the billing mistake as a "total disregard" for the order warranting cancellation of the Company's certificate.

Nature of Dispute

This dispute involves a number of difficult issues: the Commission's authority to regulate commercial speech, to impede an IXC from using a federally registered service mark, and to issue a proposed agency action order rejecting a non-existent request, to name just three. AmeriVision's primary interest, however, is not litigating issues but rather restoring its excellent record of regulatory compliance. With this in mind, AmeriVision has straightforwardly acknowledged in this letter that certain bills issued for Florida intrastate service did not conform to Commission rules. This, however, is not a violation of the Order Regarding Name, nor is it a violation charged in the Order Proposing Cancellation. Nevertheless, without admitting any willful intent to violate the rule, AmeriVision offers \$5,000.00 to settle this violation. AmeriVision believes that this is a reasonable amount given that this is its first enforcement proceeding.

Other aspects of this dispute involve legal and policy concerns about AmeriVision's use of its service mark "LifeLine Communications." AmeriVision believes that the Commission may not and should not attempt to restrict AmeriVision's commercially reasonable use of its service mark. AmeriVision does recognize, however, that the Commission may wish to assure itself that there are no legitimate public interest concerns involved with that use. AmeriVision believes that these issues are better addressed outside an enforcement proceeding. AmeriVision thus proposes that it file a petition to amend its certificate, which petition the Commission could either grant or reject in a proposed agency action. This would afford ample opportunity to address any public interest issues around its service mark "LifeLine Communications."

Conclusion

AmeriVision acknowledges that the nationwide implementation of its marketing plan led to errors resulting in the inadvertent billing of its services in Florida under a name other than that on its certificate. AmeriVision also recognizes that the Commission and its staff have

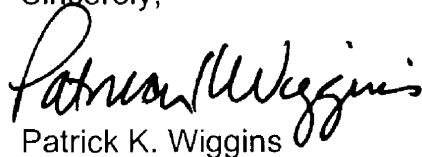
Ms. Blanca Bayo
November 1, 2001
Page 6

been troubled by its "failure" to protest the Order Regarding Name. As has been explained in this letter, the billing error was a mistake and the Order Regarding Name was viewed as maintaining the status quo with respect to the Company's business name, not as an order directed at restricting the Company's right to use its service mark in constitutionally protected commercial speech.

Other than the billing error, AmeriVision is not aware of any action it has taken or not taken that may reasonably be viewed as a violation of order, rule or statute. Moreover, AmeriVision's history of regulatory compliance and customer complaints is excellent. AmeriVision regrets any inconvenience that its actions may have caused staff and the Commission, and truly wishes to repair its working relationship with the Commission.

For these reasons, AmeriVision believes that the settlement proposed herein is useful in that it appropriately addresses both the violation of rules that did occur and the public interest issues that the Commission may wish to explore. In the meantime, AmeriVision will continue its policy of not using its service mark in Florida as a fictitious name.

Sincerely,



Patrick K. Wiggins

Attachments
cc: Kelly Franks



210 N. Park Ave.
Winter Park, FL
32789

P.O. Drawer 200
Winter Park, FL
32790-0200

Tel: 407-740-8575
Fax: 407-740-0613
tmi@tminc.com

February 3, 2000
Overnight Delivery

Mr. Walter D'Haeseleer
Florida Public Service Commission
Division of Communication
2540 Shumard Oaks Boulevard
Gerald L. Gunter Bldg. Room 270
Tallahassee, FL 32399-0850

RE: **Tariff Revision on Behalf of AmeriVision Communications, Inc. d/b/a LifeLine Communications ("AmeriVision")**

Dear Mr. D'Haeseleer:

Enclosed are the original and one (1) copy of a tariff revision for AmeriVision Communications, Inc. The purpose of this filing is to add the d/b/a name of LifeLine Communications. To that end, also enclosed is a copy of the Florida Secretary of State Registration of Fictitious Name. The Company respectfully requests this tariff revision to become effective on February 7, 2000.

The revised tariff pages which are attached are reflected on 7th Revised Sheet 2 - Check Sheet.

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for that purpose. Any questions regarding this filing may be directed to my attention at (407) 740-8575.

Sincerely,

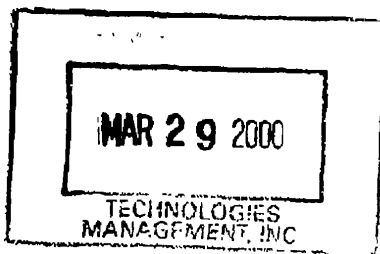
Thomas M. Forte
Consultant to AmeriVision Communications, Inc.
d/b/a LifeLine Communications

Enclosure

TF/ks

cc: Kelly Franks, AmeriVision
file: AmeriVision - FL
AmeriVision binders
tns: FLo0001

ATTACHMENT 1



March 23, 2000
Overnight Delivery

T-000464

210 N Park Ave
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32789

P.O. Drawer 200
Winter Park, FL
32790-0200

Tel: 407-740-8575
Fax: 407-740-0613
tmi@tminc.com

Mr. Walter D'Haeseleer
Florida Public Service Commission
Division of Communication
2540 Shumard Oaks Boulevard
Gerald L. Gunter Bldg. Room 270
Tallahassee, FL 32399-0850

RE: **Tariff Revision for AmeriVision Communications, Inc. d/b/a LifeLine Communications**

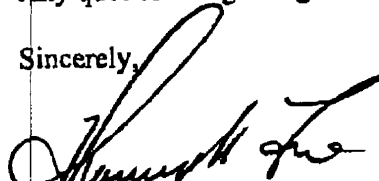
Dear Mr. D'Haeseleer:

Enclosed are the original and three (3) copies of revised tariff pages for AmeriVision Communications, Inc. d/b/a LifeLine Communications ("AmeriVision"). The purpose of this filing is to add four new products, LifeLine Freedom, Residential LifeLine Connections, Business LifeLine Connections and LifeLine Sunday Connections. The Company respectfully requests an effective date of March 25, 2000.

The following revised pages are attached:

- | | |
|----------------------------------|---|
| 8 th Revised Sheet 2 | Updates Check Sheet |
| Original Sheet 18.7 | Adds LifeLine Freedom Service |
| Original Sheet 18.8 | Adds Residential LifeLine Connections Service |
| Original Sheet 18.9 | Adds Business LifeLine Connections Service |
| Original Sheet 18.10 | Adds LifeLine Sunday Connections Service |
| 5 th Revised Sheet 21 | Adds LifeLine Freedom Rates |
| 4 th Revised Sheet 22 | Adds Residential LifeLine Connections Rates |
| 4 th Revised Sheet 23 | Adds LifeLine Freedom Rates |
| 3 rd Revised Sheet 24 | Adds LifeLine Sunday Rates |

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for that purpose. Any questions regarding this filing may be directed to my attention at (407) 740-8575.

Sincerely,

Thomas M. Forte
Consultant to AmeriVision Communications, Inc.

Enclosures

TMF/bk

cc: Kelly Franks, AmeriVision
AmeriVision binders
file: AmeriVision - FL
tms: FLo0002

FLORIDA
PUBLIC SERVICE COMMISSION
DIV. OF TELECOMMUNICATIONS

2000 MAR 24 PM 3:13

ATTACHMENT 2



210 N. Park Ave.
Winter Park, FL
32789

P.O. Drawer 200
Winter Park, FL
32790-0200

Tel. 407-740-8575
Fax: 407-740-0613
tmi@tminc.com

March 29, 2000
Overnight Delivery

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FLORIDA
PUBLIC SERVICE COMMISSION
DIV. OF TELECOMMUNICATIONS

Mr. Walter D'Haeseleer
Florida Public Service Commission
Division of Communication
2540 Shumard Oaks Boulevard
Gerald L. Gunter Bldg. Room 270
Tallahassee, FL 32399-0850

RE: **Tariff Revision for AmeriVision Communications, Inc.**
Docket # T-000464

Dear D'Haeseleer:

Please accept this letter as a request for the withdrawal of AmeriVision's tariff filing dated March 23, 2000. This was filed in error, as the company is not using a d/b/a name in Florida.

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for that purpose. Any questions regarding this filing may be directed to my attention at (407) 740-8575.

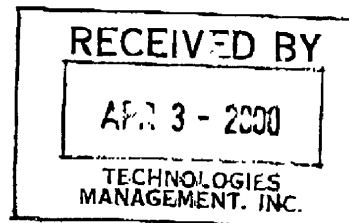
Sincerely,

Thomas M. Forte
Consultant to AmeriVision Communications, Inc.

Enclosures

TMF/ks

cc: Kelly Franks, AmeriVision
AmeriVision binders
file: AmeriVision - FL
tms: FLo0003





April 5, 2000
Overnight Delivery

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Winter Park, FL
32789

P.O. Drawer 200
Winter Park, FL
32790-0200

Tel: 407-740-8575
Fax: 407-740-0613
tmi@tminc.com

Mr. Walter D'Haeseleer
Florida Public Service Commission
Division of Communication
2540 Shumard Oaks Boulevard
Gerald L. Gunter Bldg. Room 270
Tallahassee, FL 32399-0850

RE: **Withdrawal of Tariff Revision for AmeriVision Communications, Inc.
No. T-000-494**

Dear D'Haeseleer:

Please accept this letter as a request for Withdrawal of the recent tariff revision for AmeriVision Communications, Inc. ("AmeriVision") which added four new LifeLine services to their tariff. The Company will file another revision in its place shortly.

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for that purpose. Any questions regarding this filing may be directed to my attention at (407) 740-8575.

Sincerely,

Thomas M. Forte
Consultant to AmeriVision Communications, Inc.

Enclosures

TMF/ks

cc: Kelly Franks, AmeriVision
AmeriVision binders
file: AmeriVision - FL
tms: FLo0005