

State of Florida



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-

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COMMISSION CLERK

**DATE:** FEBRUARY 7, 2002

**TO:** DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (KENNEDY) *REK*  
OFFICE OF GENERAL COUNSEL (L. FORDHAM) *C.F.F. BK*

**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.

**AGENDA:** 02/19/02 - REGULAR AGENDA - PROCEDURAL - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\010591.RCM

CASE BACKGROUND

- February 15, 1991 - AmeriVision Communications, Inc. (AmeriVision) obtained Florida Public Service Commission interexchange company (IXC) Certificate No. 2497.
- April 26, 2000 - In Docket No. 000153-TI, the Commission issued Proposed Agency Action (PAA) Order No. PSC-00-0827-PAA-TI, Attachment A, which denied AmeriVision's request to change the name on its certificate from AmeriVision Communications, Inc. to AmeriVision Communications, Inc. d/b/a LifeLine Communications. Upon receiving no protests to its PAA Order, the Commission issued Consummating Order No. PSC-00-0999-CO-TI on May 19, 2000, making Order No. PSC-00-0827-PAA-TI final and effective.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

DOCKET NO. 010591-TI  
DATE: FEBRUARY 7, 2002

- April 25, 2001 - Because AmeriVision continued to use the fictitious name LifeLine Communications, staff opened this docket to initiate cancellation of AmeriVision's IXC Certificate No. 2497 for the apparent violation of Commission Order No. PSC-00-0827-PAA-TI.
- May 23, 2001 - The Commission issued PAA Order No. PSC-01-1170-PAA-TI, Attachment B, to cancel AmeriVision's IXC Certificate No. 2497.
- June 12, 2001 - AmeriVision filed a Petition for Evidentiary Hearing and Memorandum in Opposition to Cancellation of Its IXC Certificate No. 2497. (Attachment C)
- November 2, 2001 - The Commission received AmeriVision's proposed settlement (Attachment D) to resolve the issues in this docket.

The Florida Public Service Commission is vested with jurisdiction over this matter pursuant to Sections 364.01(4)(c), 364.285 and 364.337, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission accept AmeriVision Communications, Inc.'s proposed settlement, whereby the company would make a voluntary payment of \$5,000 to the General Revenue Fund to resolve the company's apparent violation of Order No. PSC-00-0827-PAA-TI?

**RECOMMENDATION:** No. The Commission should reject AmeriVision's proposed settlement, whereby the company would make a voluntary payment of \$5,000 to the General Revenue Fund to resolve the company's apparent violation of Order No. PSC-00-0827-PAA-TI and set this Docket for Hearing. (KENNEDY/L. FORDHAM)

**STAFF ANALYSIS:** On April 26, 2000, in Docket No. 000153-TI, the Commission issued Order No. PSC-00-0827-PAA-TI (Attachment A) denying AmeriVision's request to add the fictitious name LifeLine Communications to its IXC certificate. The Commission found that it was not in the public's interest to approve the name change because the fictitious name will be unduly confusing with the current Federal LifeLine Assistance Program.

In April 2001, staff received a customer's bill issued by LifeLine Communications. The bill identified LifeLine Communications as the telecommunications services provider. A staff person also reported hearing radio advertisements broadcast on WVCV Radio, in which LifeLine Communications solicited customers for long distance service. LifeLine Communications is not certificated by the Commission to provide telecommunications services in Florida. Staff concluded that it was AmeriVision using the fictitious name LifeLine Communications.

Staff opened Docket No. 010591-TI to cancel AmeriVision's certificate for the apparent violation of Order No. PSC-00-0827-PAA-TI. On May 23, 2001, the Commission issued Order No. PSC-01-1170-PAA-TI (Attachment B) to cancel AmeriVision's certificate for the apparent violation of Order No. PSC-00-0827-PAA-TI.

On June 12, 2001, AmeriVision filed a Petition for Evidentiary Hearing and Memorandum in Opposition to Cancellation of Its IXC Certificate No. 2497 (Attachment C).

On November 1, 2001, and prior to the hearing, AmeriVision filed a proposed settlement (Settlement) to resolve the issues in this docket. In its Settlement, AmeriVision offers the following:

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- without admitting willful intent, pay \$5,000 to settle billing violations, and
- outside an enforcement proceeding, file a petition to amend its certificate to add the d/b/a LifeLine Communications.

Staff believes that AmeriVision's Settlement does not adequately address the Commission's charge that the company failed to comply with Order No. PSC-00-0827-PAA-TI by using the name LifeLine Communications. AmeriVision has offered not to use the name LifeLine Communications in Florida, but does so as a prelude to its introduction of a petition to amend its certificate to add the d/b/a LifeLine Communications.

The company's offer of \$5,000 to settle a billing violation bears no relevance in this proceeding. Commission Order No. PSC-00-0827-PAA-TI did not charge the company with a billing rule violation.

Accordingly, staff recommends that the Commission should reject AmeriVision's proposed settlement, whereby the company would make a voluntary payment of \$5,000 to the General Revenue Fund to resolve the company's apparent violation of Order No. PSC-00-0827-PAA-TI and set this Docket for Hearing.

DOCKET NO. 010591-TI  
DATE: FEBRUARY 7, 2002

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Whether the Commission approves or denys staff's recommendation in Issue 1, this docket should remain open.  
(Fordham)

STAFF ANALYSIS: Whether the Commission approves or denys staff's recommendation in Issue 1, this docket should remain open.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for name change  
on Interexchange  
Telecommunications Certificate  
No. 2497 from Amerivision  
Communications, Inc. to  
Amerivision Communications, Inc.  
d/b/a Lifeline Communications.

DOCKET NO. 000153-TI  
ORDER NO. PSC-00-0827-PAA-TI  
ISSUED: April 26, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.  
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION  
ORDER DENYING REQUEST FOR NAME CHANGE ON  
INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

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.

Upon further review, we are concerned that this fictitious name appears to be unduly confusing with the current Federal

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DOCKET NO. 000153-TI  
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LifeLine Assistance Program. Therefore, we do not find it in the public interest to approve the requested name change.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Amerivision Communications, Inc.'s request for name change is hereby denied. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of April, 2000.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: s/ Blanca S. Bayó  
Kay Flynn, Chief  
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

( S E A L )

KMP

DISSENT

DOCKET NO. 010591-TI  
DATE: FEBRUARY 7, 2002

ATTACHMENT A

ORDER NO. PSC-00-0827-PAA-TI  
DOCKET NO. 000153-TI  
PAGE 3

Commissioner Deason dissents, without comment, from the majority's decision in this case.



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DOCKET NO. 000153-TI  
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 17, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 010591-TI  
ORDER NO. PSC-01-1170-PAA-TI  
ISSUED: May 23, 2001

The following Commissioners participated in the disposition  
of this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION  
ORDER CANCELLING CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action discussed herein is preliminary in  
nature and will become final unless a person whose interests are  
substantially affected files a petition for a formal proceeding,  
pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

AmeriVision Communications, Inc. (AmeriVision or company)  
obtained its interexchange company (IXC) Certificate No. 2497 from  
us on February 15, 1991. We denied their request to change the  
company's name to AmeriVision Communications, Inc. d/b/a Lifeline  
Communications by Proposed Agency Action Order No. PSC-00-0827-PAA-  
TI, issued April 26, 2000, in Docket No. 000153-TI. Since no  
protests were filed, our order denying the name change became final  
on May 19, 2000, by Consummating Order No. PSC-00-0999-CO-TI.

On September 17, 2000, our staff received an inquiry  
concerning a radio advertisement during which AmeriVision

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advertised long distance telephone service under the name Lifeline Communications. In response to the inquiry, by certified letter dated October 20, 2000, to Mr. Stephen D. Halliday, our staff notified AmeriVision it was in apparent violation of Commission Order No. PSC-00-0827-PAA-TI because the name Lifeline Communications was being used in Florida. Staff included a copy of an August 20, 2000, billing statement on which Lifeline was prominently displayed above the name AmeriVision Communications, Inc., and also discussed the radio advertisement for Lifeline Communications.

AmeriVision responded in essentially identical letters on December 1, and December 4, 2000. In its responses, the company claimed it had not been using the corporate name Lifeline Communications in the State of Florida on its bills. Instead, the company included Lifeline, its registered service mark, as well as the certificated name, AmeriVision Communications, Inc. on its billing statements. Regarding the radio advertisement, AmeriVision claimed that some of its radio advertisements in Florida may have been ambiguous, but the company had taken steps to avoid ambiguous advertisements in the future in Florida.

In addition, Mr. Greg Voight, representing AmeriVision, contacted staff in December of 2000 to ensure that AmeriVision's written response had satisfied our staff's concerns. Because the company's bills reflected Lifeline as a trademark and did identify AmeriVision Communications, Inc. as the service provider, and the company had reportedly taken action to correct the radio advertisements, staff advised Mr. Voight that the company appeared to be taking the necessary steps to ensure compliance with the Commission's order. Our staff also advised Mr. Voight that AmeriVision should fully comply with Order No. PSC-00-0827-PAA-TI to avoid any future complications.

Our staff later received a copy of an AmeriVision telephone bill dated March 20, 2001, on which the name Lifeline Communications only is used. The name AmeriVision Communications does not appear anywhere on the March 2001 bill. In addition, on April 16, 2001, and subsequent dates, local Tallahassee radio station WVCV 1330 AM broadcast advertisements in which Lifeline Communications solicited customers for long distance service.

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DOCKET NO. 010591-TI  
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DISCUSSION

We are vested with jurisdiction over this matter pursuant to Sections 364.01(4)(c), 364.285, and 364.337, Florida Statutes.

When we denied AmeriVision's request to change its name to AmeriVision Communications, Inc. d/b/a Lifeline Communications, we were concerned that the fictitious name would be unduly confusing with the current Federal LifeLine Assistance Program. Order No. PSC-00-0827-PAA-TI, issued April 26, 2000, in Docket No. 000153-TI. We found that it would not be in the public interest to approve the requested name change. Id.

When we compared AmeriVision's August 20, 2000, billing statement to its March 20, 2001, bill to the same customer, it was evident that the company had stopped using the certificated provider name, AmeriVision Communications, Inc., and was now using only the name Lifeline Communications on its bills. We reviewed the billing format, addresses, customer service number, and other information to determine that AmeriVision Communications, Inc. and Lifeline Communications were the same entity. In addition, the company has continued to advertise under the name Lifeline in Florida.

Pursuant to Rule 25-24.474, Florida Administrative Code, we may cancel a company's certificate on our own motion for violation of a Commission rule or order. We find that AmeriVision Communications, Inc. has demonstrated a total disregard of our Order No. PSC-00-0827-PAA-TI. We therefore find that the ultimate penalty should be imposed, that is, the company's certificate should be revoked. Accordingly, we order AmeriVision Communications, Inc.'s Interexchange Telecommunications Certificate No. 2497 cancelled for violation of Order No. PSC-00-0827-PAA-TI.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that AmeriVision Communications, Inc.'s Interexchange Telecommunications Certificate No. 2497 shall be cancelled for violation of Order No. PSC-00-0827-PAA-TI. It is further

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DOCKET NO. 010591-TI  
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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of May, 2001.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

( S E A L )

MAH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

ORDER NO. PSC-01-1170-PAA-TI  
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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 13, 2001.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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	)	
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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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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.<sup>1</sup>

**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

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<sup>1</sup> 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.

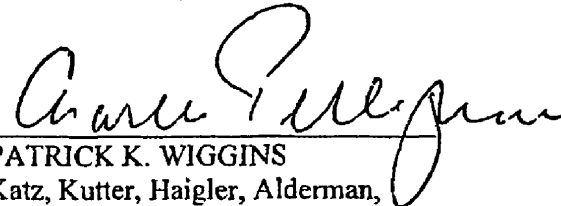
12. The Commission's proposed agency action is an impermissible infringement of AmeriVision's statutory right to the lawful use of its service mark.

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  
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Tallahassee, Florida 32301  
Telephone (850) 224-9634  
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Attorney for

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(202) 393-1132  
fax (202) 393-6969

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  
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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 3<sup>rd</sup> 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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November 1, 2001  
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 3<sup>rd</sup> 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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November 1, 2001  
Page 5

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



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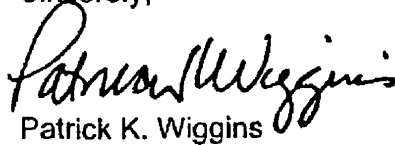
Ms. Blanca Bayo  
November 1, 2001  
Page 6

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



February 3, 2000  
Overnight Delivery

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

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 7<sup>th</sup> 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

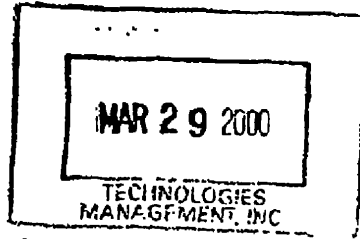
Enclosure

TF/ks

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

Sent By: A

114



March 23, 2000  
Overnight Delivery

7-000464

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

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

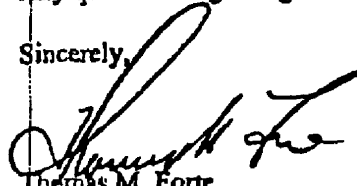
Dear Mr. D'Haeseleer:

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 <sup>th</sup> 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 <sup>th</sup> Revised Sheet 21 | Adds LifeLine Freedom Rates                   |
| 4 <sup>th</sup> Revised Sheet 22 | Adds Residential LifeLine Connections Rates   |
| 4 <sup>th</sup> Revised Sheet 23 | Adds LifeLine Freedom Rates                   |
| 3 <sup>rd</sup> 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  
DIVISION OF TELECOMMUNICATIONS

2000 MAR 24 PM 3:13

ATTACHMENT 2

Sent By:



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

2000 MAR 30 PM 3: 23

FLORIDA  
PUBLIC SERVICE COMMISSION  
DIV. OF TELECOMMUNICATIONS

Mr. Walter D'Haeleer  
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'Haeleer:

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.

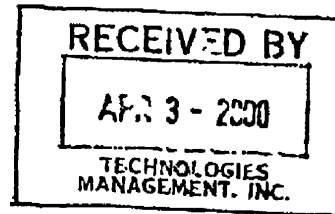
Sincerely,

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

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

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 Franka, AmeriVision  
AmeriVision binders  
file: AmeriVision - FL  
tms: FLo0005