

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of CABLE TV-FUND)	DOCKET NO. 891305-TI
12-BCD VENTURE d/b/a JONES INTERCABLE)	ORDER NO. 24580
for authority to provide interexchange)	ISSUED: 5/24/91
telecommunications service)	
<hr/>		

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 GERALD L. GUNTER
 MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING APPLICATION WITHDRAWAL

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

In 1989, with the introduction of Alternative Access Vendors in Florida, our Staff initiated an inquiry into the services provided by cable networks. Data requests were sent to city and county municipalities, major electric companies and the major interexchange carriers (IXCs) to determine what type of services the cable networks provided to unaffiliated entities within their service area. These data requests also asked the municipalities and electric companies to identify any company other than the local exchange company (LEC) that provided telecommunications services. The results of the data request sent to the City of Tampa showed that Cable TV Fund 12-BCD Venture d/b/a Jones Intercable (Jones or the Company) was leasing capacity to the City of Tampa.

On November 17, 1989, Jones filed an application with this Commission to provide interexchange telecommunications service. In order to clarify the Company's application, our Staff sent a set of interrogatories on February 2, 1990. On March 9, 1990, Jones filed a motion to hold its IXC application in abeyance until it had time to file a request for a declaratory statement, which the Company believed would put it in a better position to answer the

DOCUMENT NUMBER-DATE

05255 MAY 24 1991

PSC-RECORDS/REPORTING

ORDER NO. 24580
DOCKET NO. 891305-TI
PAGE 2

interrogatories. However, Jones never filed a request for a declaratory statement. By Order No. 23713, issued November 1, 1990, we denied the Company's motion to hold its IXC application in abeyance and required the Company to respond to our Staff's interrogatories within 20 days. On November 14, Jones filed a motion to withdraw its IXC application. The Company was informed that it was required to answer the interrogatories before its application could be withdrawn. On January 8, 1991, Jones filed its response to Staff's first set of interrogatories.

Jones maintains that provides one-way video service. On April 11, 1991, the City of Tampa confirmed that Jones provides only one-way video service at this time.

Discussion of Issues

Based on the information received from the City of Tampa, we believe that Jones has constructed a cable television network, a city wide institutional network (I-NET), and an institutional network serving Tampa's central business district (CBD-NET). The I-NET is a two-way broadband coaxial cable network that parallels the cable television network throughout the residential areas of the City of Tampa and can accommodate voice, video, and data transmissions. The CBD-NET is a two-way broadband coaxial cable network that parallels the cable television network throughout the central business district area of the City of Tampa. This network was initially installed by Jones to enable the City of Tampa to transport video, voice and data information within and between city buildings. Both the I-NET and the CBD-NET were constructed pursuant to franchise requirements.

Currently, Jones is providing only one-way video service to the City of Tampa, and does not need an IXC certificate to perform that service. Therefore, we believe it is appropriate to allow the Company to withdraw its IXC application at this time. However, in the application that Jones filed on November 19, 1989, it listed five services that it proposed to offer in the future. Those services are: telemetry service, interactive video service, two-way narrowband service, high speed data service, and video conferencing service. Additionally, the City of Tampa's franchise agreement with Jones lists all of these services as services that the city wants Jones to provide over the I-NET and CBD-NET. We believe that these are two-way telecommunications services. Thus,

ORDER NO. 24580
DOCKET NO. 891305-TI
PAGE 3

we are concerned about what Jones intends to do with its network in the future.

Section 364.02(7), Florida Statutes, gives this Commission authority to regulate the provision of telecommunications service. Specifically, a telecommunications company is defined as an entity "offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility." Section 364.02(7) also provides an exemption from the Commission's jurisdiction for "cable television company providing cable service as defined in 47 U.S.C. 522." The U.S.C. defines cable service as the one-way transmission to subscribers of video programming, or other programming service; and subscriber interaction which is required for the selection of such video programming or other programming service. We believe that this definition allows Jones to provide one-way video service and pay-per-view type services. The provision of any two-way telecommunications service would remove Jones from the cable television exemption.

Thus, while we find that it is appropriate to allow Jones to withdraw its IXC application at this time, we also want to caution the Company that it may not provide any intrastate two-way telecommunications without prior Commission approval.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of Cable TV Fund 12-BCD Venture d/b/a Jones Intercable for authority to provide interexchange telecommunications service is hereby withdrawn. It is further

ORDERED that this docket be closed if no protest is filed in accordance with the requirement set forth below.

ORDER NO. 24580
DOCKET NO. 891305-TI
PAGE 4

By ORDER of the Florida Public Service Commission, this
24th day of MAY, 1991.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

PAK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on

June 12, 1991.

ORDER NO. 24580
DOCKET NO. 891305-TI
PAGE 5

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.