

FLORIDA PUBLIC SERVICE COMMISSION  
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MEMORANDUM

March 12, 1998

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

FROM: DIVISION OF COMMUNICATIONS (BIEGALSKI) *UB*  
DIVISION OF AUDITING & FINANCIAL ANALYSIS (DRAPER) *DR*  
DIVISION OF LEGAL SERVICES (K. PERA) *UP MB*

RE: DOCKET NO. 94463-SL - APPLICATION FOR CERTIFICATE TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICE BY COMMUNICATION OPPORTUNITY, INC.

AGENDA: 03/24/98 REGULAR AGENDA - ISSUES 1 AND 3 - PROPOSED AGENCY ACTION - ISSUE 2- SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

SPECIAL INSTRUCTIONS: S:PSC/CMU/WP/971163TI.RCM

CASE BACKGROUND

Staff received information that Communication Opportunity, Inc. (COI) may be providing debit card services without a certificate from this Commission. On June 12, 1997, staff sent a certified letter to COI requesting information to help determine if certification is required. COI responded to staff's letter on June 16, 1997. Based on COI's response that there are companies who provide 800 service directly into COI's facilities, that COI receives a bill for the usage of the 800 service, and that COI issues PIN numbers, staff mailed an application for a certificate to provide interexchange telecommunications (IXC) service to COI on June 18, 1997.

On September 3, 1997, COI filed an application to provide IXC service in Florida. The staff of the Division of Communications contacted COI and its representatives on numerous occasions requesting the Secretary of State filing and a corrected tariff. To date, neither has been received.

Based on these circumstances, staff believes the following recommendations are appropriate.

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**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant Communication Opportunity, Inc.'s application for a certificate to provide interexchange telecommunications service in Florida?

**RECOMMENDATION:** No. COI has not provided the Commission with a completed IXC application. Therefore, the application should be denied. (Bieglaksi)

**STAFF ANALYSIS:** Rule 25-24.471, Florida Administrative Code, Application for Certificate, states in part:

- (1) An applicant desiring to apply for a certificate shall submit an application on Commission Form PSC/CMU 31 (12/96), which is incorporated into this rule by reference.

Commission staff provided COI an application packet that contained the application form, an example tariff, a check list for IXC tariffs, an IXC information brochure, IXC Rules, and telecommunications tax information from the Florida Department of Revenue.

Item 9 on page 4 of the application states, "If incorporated, please give: (a) proof from the Florida Secretary of State that the applicant has authority to operate in Florida." As of this date, COI has not provided the Commission with a copy of the Secretary of State information. In addition, the tariff that was submitted was not complete.

Therefore, since COI has failed to comply with the requirements of Rule 25-24.471, Florida Administrative Code, staff recommends that the Commission deny the application of COI for a certificate to provide interexchange telecommunications service in Florida.

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**ISSUE 2:** Should the Commission order Communication Opportunity, Inc. to show cause in writing why a fine of \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, should not be assessed?

**RECOMMENDATION:** Yes. Due to the fact that it appears that COI is providing telecommunications service without a certificate, staff believes the Commission should require COI to show cause in writing within 20 days of the issuance of the Commission's Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The company's response must contain specific allegations of fact or law. If COI fails to respond to the show cause, the fine will be deemed assessed. If the fine is not paid after reasonable collection efforts by the Commission, it should be forwarded to the Office of the Comptroller for collection. If the fine is paid, it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (Biegalski)

**STAFF ANALYSIS:** Rule 25-24.470, Florida Administrative Code, states:

No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted. However, acquisition of equipment and facilities, advertising and other promotional activities may begin prior to the effective date of the certificate at the applicant's risk that it may not be granted. In any customer contacts or advertisements prior to certification, the applicant must advise the customer that certification has not and may never be granted.

On June 12, 1997, staff received information concerning a company called Communication Opportunity, Inc. Staff mailed a certified letter to COI informing it of its responsibility to obtain a certificate in order to provide debit card services. A questionnaire was included with the certified letter. COI responded to staff's letter stating it received a bill for the usage of the 800 service, that there were companies that provide

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service into its facilities, and that COI issues the PINs for the prepaid phone cards. Based on this information, it appears that COI has violated Rule 25-24.470, Florida Administrative Code, by offering telecommunications service without a certificate.

In previous dockets involving companies operating without a certificate, fines and settlements have ranged up to \$40,714. Staff believes that a fine of \$25,000 for operating without a certificate is appropriate. Due to the fact that COI appears to be providing telecommunications service without a certificate, staff recommends that the Commission should issue a show cause order.

**ISSUE 3:** Should the Commission order all certificated interexchange companies (IXCs) to discontinue providing interexchange telecommunications service to Communication Opportunity, Inc. pursuant to Rule 25-24.4701(3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited?

**RECOMMENDATION:** Yes. It appears that COI may be operating in Florida without a certificate in violation of Rule 25-24.4701(3), Florida Administrative Code. The order should state that all IXC's will be notified when the Commission's order becomes final. (Biegalski)

**STAFF ANALYSIS:** Rule 25-24.4701 (3), Florida Administrative Code, Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited, states:

(3) The Commission, upon making a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service may issue an order that directs the customer to cease and desist reselling or rebilling such service and simultaneously directs the interexchange company to discontinue providing such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of

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service is technically feasible within the context of existing facilities and technology.

It appears that COI may be operating in Florida without a certificate. Accordingly, staff recommends that the Commission order all certificated IXCs to discontinue providing intrastate long distance service for resale to this company upon the Commission's decision to deny the application and conclusion of the protest period. The order should state that any IXC providing service to the company will be notified when the Commission's order becomes final.

**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** The docket should remain open pending the resolution of the show cause proceeding, and the processing of any protest to Issues 1 or 3 that may be filed within 21 days of the issuance of the Order by a person whose substantial interests are affected by these Proposed Agency Actions. If no response to the show cause order is filed within 20 days of the issuance of the Show Cause Order the fine should be assessed. After reasonable collection efforts have been made, the fine should be forwarded to the Comptroller's Office for collection. (K. Pena)

**STAFF ANALYSIS:** If staff's recommendation in Issue 2 is approved, COI should be ordered to respond within 20 days of the Commission's show cause order. If COI timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If COI fails to respond to the show cause order, the fine should be assessed.

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COMMUNICATION OPPORTUNITY, INC.

IXC TELECOMMUNICATION SERVICE  
FINANCIAL ANALYSIS

FROM UNAUDITED FINANCIAL STATEMENTS

FOR A TEN MONTH PERIOD  
ENDING  
01/31/97

CURRENT ASSETS	\$285,778
CURRENT LIABILITIES	72,043
CURRENT RATIO	3.97
CASH	46,220
COMMON EQUITY	96,132
TOTAL DEBT	200,000
TOTAL INVESTOR CAPITAL	296,132
COMMON EQUITY RATIO	32%
NET INCOME	51,519
RETURN ON EQUITY	54%

NMF = No Meaningful Figure