

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
certificate to provide
interexchange telecommunications
service by KTNT Communications,
Inc. d/b/a IDC
Telecommunications.

DOCKET NO. 970109-TI
ORDER NO: PSC-98-0704-PHO-TI
ISSUED: May 21, 1998

Pursuant to Notice, a Prehearing Conference was held on
May 15, 1998, in Tallahassee, Florida, before Commissioner Susan F.
Clark, as Prehearing Officer.

APPEARANCES:

Patrick K. Wiggins, Esq., Wiggins & Villacorta, Post
Office Drawer 1657, Tallahassee, FL 32302.
On behalf of KTNT Communications, Inc. d/b/a IDC
Telecommunications.

Michael A. Gross, Esq., Assistant Attorney General,
Department of Legal Affairs, Room PL-07, The Capitol,
Tallahassee, FL 32399-1050.
On behalf of the Office of the Attorney General.

Charles J. Beck, Esq., Deputy General Counsel, Office of
Public Counsel, c/o The Florida Legislature, 111 West
Madison Street, Room 812, Tallahassee, FL 32399-1400.
On behalf of the Office of Public Counsel.

Martha Carter Brown, Esquire, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850.
On behalf of the Commission Staff.

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FPSC-RECORDS/REPORTING

PREHEARING ORDER

I. CASE BACKGROUND

On September 9, 1997, the Commission issued Proposed Agency Action Order No. PSC-97-1060-FOF-TI granting an interexchange telecommunications certificate to KTNT Communications, Inc. d/b/a IDC Telecommunications (KTNT). On September 15, 1997, the Office of Public Counsel (OPC), filed a timely protest of the Order, raising specific issues with respect to the managerial capabilities and business practices of KTNT. On November 7, 1997, the Office of the Attorney General (OAG), filed a petition to intervene. By Order PSC-97-1576-PCO-TI, issued on December 15, 1997, the Commission granted the intervention. Accordingly, this matter is currently set for an administrative hearing.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is

defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>ISSUE NO.</u>
<u>DIRECT AND REBUTTAL</u>		
Dennis Dees	KTNT	All issues
R. Earl Poucher	OPC/Attorney General	All issues

V. BASIC POSITIONS

KTNT:

KTNT has established the technical, managerial, and financial fitness to be certificated and the Commission should grant it an IXC certificate as soon as possible.

The OPC and Attorney General oppose the grant, alleging that KTNT would trick customers and unfairly compete with other carriers. But they do not bring any evidence of trickery or unfair competition; they simply do not like KTNT's strategy for the "zero minus" market. KTNT has completed over 300,000 calls in Texas without complaints from customers, regulators or competitors. KTNT's use of its controversial fictitious names has not been a problem, and the opposition of the OPC/Attorney General to KTNT's application is not based on real-world experience.

KTNT applied for a certificate over a year ago. Staff has recommended twice that it be granted a certificate. KTNT has shown by its conduct in this proceeding that it attempts to honor regulatory policy. KTNT has the technical, managerial, and financial fitness to be certificated and the Commission should grant the certificate to KTNT Communications, Inc., d/b/a I Don't Care and d/b/a It Doesn't Matter without further delay.

OPC/ATTORNEY GENERAL:

Section 364.337(3), Florida Statutes (1997) states that the Commission shall grant a certificate of authority to provide

intrastate interexchange telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capabilities to provide such service. KTNT has made it clear that its management wishes to use fictitious names such as "I don't care" and "It doesn't matter" to trick the public into using their service. Since such operations are a management decision, the company has shown that it has inadequate management capabilities to support a certificate from this Commission.

KTNT's plan to use fictitious names such as "I don't care" and "It doesn't matter" are also anticompetitive. By tricking customers into use of their service, a competitor is deprived of the opportunity to provide service to a customer who does not wish to select a specific company to provide service. Section 364.01(g), Florida Statutes (1995) requires the Commission to ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory constraint. Here, regulatory restraint is necessary to prevent anticompetitive behavior.

Section 364.335(3), Florida Statutes, empowers the Commission to make modifications to certificates in the public interest. If the Commission should nevertheless decide to grant a certificate to KTNT, it should modify the certificate to prohibit the company from using misleading fictitious names in Florida.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

ISSUE 1: Has KTNT made the requisite showing pursuant to Section 364.337(3), Florida Statutes, that it has sufficient technical, financial, and managerial capability to

provide interexchange telecommunications services within the state?

POSITIONS:

KTNT: Yes. The OPC/Attorney General have opposed KTNT's application on the basis that KTNT is managerially unfit to operate as an intrastate carrier. The OPC/Attorney General allege that KTNT's zero minus strategy uses fictitious names to trick customers and unfairly compete with other carriers. But KTNT has completed over 300,000 calls in Texas using this strategy without customers, competitors or regulators complaining. The opposition of the OPC/Attorney General does not rise above allegation.

OPC/AG: KTNT has made it clear that its management wishes to use fictitious names such as "I don't care" and "It doesn't matter" to trick the public into using their service. Since such operations are a management decision, the company has shown that it has inadequate management capabilities to support a certificate from this Commission.

STAFF: Staff has no position at this time.

ISSUE 2: What are KTNT's business plans for the state of Florida?

POSITIONS:

KTNT: KTNT's initially will operate in Florida as a switchless reseller whose primary business activity is as an operator service provider. In this context, we will be using the fictitious names of "I Don't Care" and "It Doesn't Matter." KTNT will be expanding into other areas of telecommunications such as one plus and 800-888 numbers as time permits.

OPC/AG: KTNT plans to use the names "I don't care" and "It doesn't matter" for operator transfer services. The company has a token marketing effort, relying

instead on tricking the public into using its services.

STAFF: Staff has no position at this time.

ISSUE 3: Are KTNT's business plans for the state of Florida in the public interest?

POSITIONS:

KTNT: Yes.

OPC/AG: No.

STAFF: Staff has no position at this time.

ISSUE 4: Is it in the public interest to allow KTNT to obtain a certificate from the Commission?

POSITIONS:

KTNT: Yes.

OPC/AG: No, it is not in the public interest to allow KTNT to obtain a certificate from the Commission.

STAFF: Staff has no position at this time.

ISSUE 5: If it is in the public interest to allow KTNT to obtain a certificate from the Commission, should the certificate be modified to prohibit the company from using fictitious names in Florida?

POSITIONS:

KTNT: No. The OPC/Attorney General would prohibit KTNT from using the fictitious names "I Don't Care and "It Doesn't Matter." They allege that KTNT would trick customers and unfairly compete with other carriers. But they do not bring any evidence of trickery or unfair competition; they simply do not

like KTNT's strategy for the "zero minus" market. KTNT has completed over 300,000 calls in Texas without complaints from customers, regulators or competitors. KTNT's use of its controversial fictitious names has not been a problem, and the opposition of the OPC/Attorney General to KTNT's application is not based on real-world experience. In addition, attempting to restrict the use of a valid service mark under these circumstances may violate KTNT's right to commercial free speech.

OPC/AG: Yes, if the Commission decides to grant a certificate to KTNT, the certificate should be modified to prohibit the company from using misleading fictitious names in Florida.

STAFF: Staff has no position at this time.

VII. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NUMBER</u>	<u>DESCRIPTION</u>
Dennis Dees	KTNT	DD-1	Names of Certificated Carriers

Parties and Staff reserve the right to identify exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

None at this time.

IX. PENDING MOTIONS

None at this time.

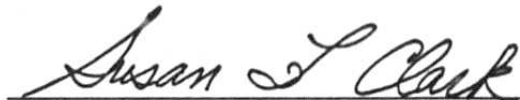
X. RULINGS

The parties may present brief opening statements of five minutes each to the Commission at the commencement of the hearing.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 21st day of May, 1998.



Susan F. Clark, Commissioner
and Prehearing Officer

(S E A L)

MCB

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial

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review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.