

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 981091-TI
ORDER NO. PSC-99-0417-PCO-TI
ISSUED: March 1, 1999

ORDER DENYING MOTION TO INTERVENE

On September 1, 1998, PremierCom, Inc. (PremierCom) filed an application with the Commission for a certificate to provide long distance telecommunications resale services in Florida. PremierCom is registered with the Secretary of State to do business in Florida as PCI Telecommunications, Inc. On September 25, 1998, Premiere Communications, Inc. (Premiere) filed a Motion to Intervene and Oppose Application. Premiere provides long distance telecommunications resale services in Florida pursuant to Certificate No. 2958, issued March 31, 1992, by Order No. PSC-92-0125-FOF-TI. On October 2, 1998, PremierCom responded by letter and opposed Premiere's motion to intervene.

In its motion, Premiere asserts that it has a substantial proprietary interest in the trade name Premiere Communications, Inc. Premiere contends that the trade name PremierCom Inc. is a confusingly similar trade name and will cause Premiere to lose both customer good will and control over its corporate reputation and identity. Premiere contends that it would be contrary to the public interest to allow PremierCom to offer telecommunications services under the trade name PremierCom, Inc., because Florida customers would have difficulty distinguishing between the two service providers and their ability to make accurate, informed decisions about their long distance service provider would be impaired.

PremierCom responds that Premiere does not have standing to be a party in this proceeding, because its substantial interests will not be adversely affected if the Commission approves this certificate application. PremierCom argues that customers will not be confused, because the two names are not substantially similar, and furthermore PremierCom intends to transact business in Florida under its fictitious name, PCI Telecommunications, Inc.

DOCUMENT NUMBER-DATE

02568 MAR-1 99

FPSC-RECORDS/REPORTING

Pursuant to Rule 25-22.039, Florida Administrative Code, persons seeking to intervene in a Commission proceeding must demonstrate that they are entitled to participate because they have a substantial interest that may be adversely affected by the outcome of the proceeding. When a petitioner's standing in an action is contested, the burden is upon the petitioner to demonstrate that he does have standing to participate. Department of Health and Rehabilitative Services v. Alice P., 367 So. 2d 1045, 1052 (Fla. 1st DCA 1979). To prove standing, the petitioner must demonstrate that he will suffer an injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and that his substantial injury is of a type or nature which the proceeding is designed to protect. Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981).

Premiere has not satisfied either prong of the Agrico test. Premiere's allegations fail to demonstrate either that it will suffer an injury in fact which is of sufficient immediacy to warrant a Section 120.57 hearing, or that the injury it alleges is of a type the statute was designed to protect. First, Premiere's motion does not demonstrate sufficient harm, let alone immediate harm to warrant a hearing. The Secretary of State has registered PremierCom's corporate and fictitious names as compliant with its rules and the statutory requirements for trade names. PremierCom has indicated that it will conduct business in Florida under its fictitious name, PCI Telecommunications, Inc. That clearly is not similar enough to the name "Premiere Communications, Inc." to cause confusion for Florida consumers. Also, as the Florida Supreme Court stated in Ameristeel v. Clark, 691 So. 2d 473 (Fla. 1997), loss due to economic competition is not harm of sufficient immediacy to establish standing, and Premiere's allegations of harm to goodwill and control over its corporate reputation and identity are speculative at best.

Second, injury to Premiere's use of its trade name is not an injury the Commission's certification statute, Section 364.335, Florida Statutes, was designed to protect. Section 364.335 protects the public's interest in efficient and reliable telecommunications service. Premiere's remedy for harm to its trade name is in the courts, not in this proceeding. The motion does not demonstrate how the public's interest in efficient reliable telecommunications service will be harmed by granting this certificate, particularly because PremierCom maintains that it will

ORDER NO. PSC-99-0417-PCO-TI
DOCKET NO.- 981091-TI
PAGE 3

be providing telecommunication services in Florida under the fictitious name, PCI Telecommunications, Inc.

Based on the foregoing, Premiere's Motion to Intervene and Oppose Application in this proceeding is denied. Premiere has not met the two prongs of the Agrico test and thus lacks standing to intervene in this proceeding.

Based on the foregoing, it is

ORDERED by Commissioner E. Leon Jacobs, Jr. as Prehearing Officer that the Motion to Intervene and Oppose Application filed by Premiere Communications, Inc. is denied.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 1st day of March, 1999.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

JCM

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 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.

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.

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 25-22.0376, 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 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.