

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide interexchange telecommunications service by Vendormatic, Inc. d/b/a HSS Vending Distributors, and initiation of show cause proceedings for violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required.

DOCKET NO. 961309-TI
ORDER NO. PSC-97-0937-FOF-TI
ISSUED: August 5, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER TO SHOW CAUSE AND NOTICE OF PROPOSED
AGENCY ACTION ORDER ON APPLICATION FOR CERTIFICATE
TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that part of 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.

Show Cause

We became aware that Vendormatic, Inc. d/b/a HSS Vending Distributors (HSS Vending or the company) was apparently providing calling card services without having obtained a certificate of public convenience and necessity. On October 3, 1996, our staff

DOCUMENT NUMBER-DATE

07899 AUG-06

FPSC-RECORDS/REPORTING

ORDER NO. PSC-97-0937-FOF-TI
DOCKET NO. 961309-TI
PAGE 2

sent a certified letter to HSS Vending notifying the company that in order to operate as an interexchange telecommunications service provider in Florida the company was required to obtain a certificate of public convenience and necessity from this Commission, pursuant to Rule 25-24.470, Florida Administrative Code.

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 November 1, 1996, we received from HSS Vending the appropriate application for certification as an interexchange telecommunications service company. On November 12, 1996, the Commission's Division of Consumer Affairs received 60 complaints, regarding the People's Edge discount calling card upon which HSS Vending is identified as the service provider. The Division of Consumer Affairs reported that the customers stated they were charged for a service that they did not want, and nor to their knowledge had they submitted an application to receive the card. Based on the complaints, we believe that HSS Vending had continued operating without a certificate through a national sweepstakes drawing that offered a travel calling card and the opportunity to win prizes.

ORDER NO. PSC-97-0937-FOF-TI
DOCKET NO. 961309-TI
PAGE 3

Due to these complaints, on both February 2, 1997 and February 19, 1997, our staff informed HSS Vending by letter that it had to immediately discontinue providing any telecommunications services in Florida, including billing and collection for other entities. On March 3, 1997, HSS Vending replied that the company no longer solicited the People's Edge discount calling card and that all customers who desired to be removed from the program had been removed and awarded credits to their phone bills.

Based on the evidence available, it appears that HSS Vending has violated Rule 25-24.470, Florida Administrative Code, by offering telecommunications service without a certificate. We shall, therefore, order HSS Vending to show cause why it should not be fined for apparent violations of Rules 25-24.470, Florida Administrative Code.

Upon consideration, we find that a fine of \$25,000 for operating without a certificate is appropriate. Thus, if HSS Vending fails to respond to this show cause Order within 20 days of the issuance of this Order, the fine shall be assessed.

Proposed Agency Action:
Application for certificate to provide interexchange telecommunications services

HSS Vending has applied for a certificate to provide interexchange telecommunications (IXC) service. IXCs are subject to Chapter 25-24, Florida Administrative Code, Part X, Rules Governing Telephone Service Provided by Interexchange Telephone Companies. IXCs are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapter 25-4, Florida Administrative Code. Further, in accordance with Order No. 16804, issued November 4, 1986, IXCs may not construct facilities to bypass a local exchange company without the prior approval of this Commission.

Upon review of the company's application, it appears that HSS Vending has sufficient technical, financial, and managerial capability to provide such service, as required under Section 364.337(3), Florida Statutes. Accordingly, we hereby grant HSS Vending Certificate Number 4801 with the authority to provide

ORDER NO. PSC-97-0937-FOF-TI
DOCKET NO. 961309-TI
PAGE 4

interexchange telecommunications services. HSS Vending's IXC certificate, however, will be held in abeyance pending the resolution of the show cause proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Vendormatic, Inc. d/b/a HSS Vending Distributors shall show cause in writing within 20 days of the issuance of this Order why it should not be fined \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, as described in the body of this Order. It is further

ORDERED that Vendormatic, Inc. d/b/a HSS Vending Distributors' response shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to the Order to Show Cause portion of this Order in the manner and by the date set forth in the Notice of Further Proceedings or Judicial Review section of this Order shall constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and will result in the automatic assessment of the fine indicated in the body of this Order. It is further

ORDERED that if the fine is assessed, Vendormatic, Inc. d/b/a HSS Vending Distributors shall remit \$25,000 to this Commission for remittance to the Office of the Comptroller for deposit in the State General Revenue Fund, in accordance with Section 364.285(1), Florida Statutes. It is further

ORDERED that we hereby grant Vendormatic, Inc. d/b/a HSS Vending Distributors Certificate Number 4801 with the authority to provide interexchange telecommunications service, subject to the terms and conditions stated in the body of this Order. It is further

ORDERED that Vendormatic, Inc. d/b/a HSS Vending Distributors' IXC Certificate Number 4801 shall be held in abeyance pending the resolution of the show cause proceeding. It is further

ORDER NO. PSC-97-0937-FOF-TI
DOCKET NO. 961309-TI
PAGE 5

ORDERED that the portion of this Order that requires that the certificate be held in abeyance pending the resolution of the show cause proceeding is issued as proposed agency action and shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, 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 or Judicial Review" attached hereto. It is further

ORDERED that this docket shall remain open pending resolution of the show cause process or any protest to the Proposed Agency Action portion of this Order. It is further

ORDERED that in the event the Proposed Agency Action portion of this Order becomes final, and Vendormatic, Inc. d/b/a HSS Vending Distributors fails to respond to our Order to Show Cause as prescribed herein, the fine will be deemed assessed and this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 5th day of August, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

KMP

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.

The show cause portion of this Order is preliminary, procedural or intermediate in nature. 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 25-22.037(1), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 25, 1997.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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.

ORDER NO. PSC-97-0937-FOF-TI
DOCKET NO. 961309-TI
PAGE 7

The portion of the action proposed herein which is preliminary in nature 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 portion of the 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 26, 1997.

In the absence of such a petition, the proposed agency action portion of the 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 the proposed agency action portions of this order become final and effective on the date described above, any party substantially 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 wastewater 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.