



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

**DATE:** JULY 9 , 1998

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF COMMUNICATIONS (WILLIAMS) *TEW WDH/RF*  
 DIVISION OF AUDITING & FINANCIAL ANALYSIS (DRAPER) *DD*  
 DIVISION OF LEGAL SERVICES (PELLEGRINI) *PENA* *ALM*  
*mkB kmp*

**RE:** DOCKET NO. 961233-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST FOX FIBER OPTICS FOR VIOLATION OF RULES 25-24.470, F.A.C., CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED, AND 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES

DOCKET NO. ~~970650~~-TI - APPLICATION FOR TRANSFER OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 2929 FROM WATS/800 D/B/A ITS TO ITS BILLING, INC., D/B/A ITS BILLING, D/B/A ITS, D/B/A FOX FIBER OPTICS

**AGENDA:** 07/21/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION-ISSUE 2 - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** I:\PSC\CMU\WP\961233r2.RCM

CASE BACKGROUND

On May 5, 1997, in Order No. PSC-97-0511-FOF-TI, issued in Docket No. 961233-TI, the Commission ordered Fox Fiber Optics (Fox) to show cause why it should not be fined \$100,000 for violation of Rule 25-24.470, Florida Administrative Code, and \$25,000 for violation of Rule 25-4.043, Florida Administrative Code. On May 27, 1997, Fox filed its Response of Fox Fiber Optics to Order No. PSC-97-0511-FOF-TI, in which it denied the violations and requested a hearing pursuant to Section 120.57, Florida Statutes. Accordingly, a hearing was set for November 5, 1997.

DOCUMENT NUMBER-DATE

~~07020~~ JUL -6 98

FPSC-RECORDS/REPORTING

On June 6, 1997, Fox submitted a settlement proposal, in which it said that it was taking steps to make it clear that service is being provided by WATS/800, Inc., (WATS/800), an interexchange carrier operating in Florida with Certificate No. 2929, under the fictitious name and service mark "Fox Fiber Optics;" that Fox and WATS/800 had retained counsel as the primary contact to ensure timely response to Commission inquiries; and that it was prepared to pay \$10,000 in lieu of a fine in settlement of all potential sanctions. Staff advised Fox that its proposed payment of \$10,000 was inadequate.

Earlier, on May 27, 1997, WATS/800 advised the Commission that it would use the registered fictitious names "ITS Billing," "ITS," "Information and Telephone Services," and "Fox Fiber Optics" for various product offerings. Docket No. 970650-TI was opened for purposes of processing a certificate name change. On July 11, 1997, ITS Billing, Inc., filed an Application for Authority to Provide Interexchange Telecommunications Service within the State of Florida, seeking transfer of Certificate No. 2929 from WATS/800, Inc., d/b/a ITS, d/b/a ITS Billing, Inc., d/b/a Information and Telephone Services, and d/b/a Fox Fiber Optics to ITS Billing, Inc., d/b/a ITS Billing, Inc., d/b/a ITS, d/b/a Information and Telephone Services, and d/b/a Fox Fiber Optics (ITS). Docket No. 970650 was then restyled to reflect that its purpose now was to examine the application to transfer WATS/800's certificate to ITS. ITS filed the required tariffs on August 8, 1997.

On July 25, 1997, following discussions with staff, Fox submitted a revised settlement proposal (Attachment A), in which it proposes to make a payment in lieu of a fine in the amount of \$20,000, while observing that the transfer of certificate from WATS/800 to ITS is necessary and an essential part of the settlement because WATS/800 was declared bankrupt in a Chapter 7 proceeding and its assets assigned to ITS pursuant to a creditors' agreement approved by the bankruptcy court. ITS would provide telecommunications services as a switchless rebiller upon transfer of Certificate No. 2929.

This recommendation concerns Fox's offer of settlement in Issue 1 and ITS's request for transfer of WATS/800's certificate in Issue 2.

#### DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Fox Fiber Optics to resolve the Commission's order to show cause concerning apparent violations of Rule 25-24.470, Florida

Administrative Code, and Rule 25-4.043, Florida Administrative Code?

**RECOMMENDATION:** Yes. The Commission should accept the settlement offer proposed by Fox Fiber Optics. (Williams)

**STAFF ANALYSIS:** As noted in the Case Background, in Order No. 97-0511-FOF-TP, the Commission ordered Fox to show cause why it should not be fined \$100,000 for providing telecommunications services without certification and \$25,000 for failing to timely respond to staff inquiries. In its response to the Commission's order, Fox stated that its function is only to market the products of WATS/800, a certificated IXC, and that, therefore, it was not required to obtain a certificate in its own right. It also stated that the principals and management of Fox and WATS/800 are the same and that WATS/800 is the owner of the registered fictitious name "Fox Fiber Optics." Fox acknowledged, however, that one could reasonably infer from the facts in the case that it was an uncertificated provider of telecommunications services. It proposed that WATS/800's certificate be changed to reflect that WATS/800, as the holder, does business using the fictitious name "Fox Fiber Optics."

Fox furthermore stated that staff's inquiries were not directed to the management of the company and were, for that reason, unanswered. To assure proper responses to further staff inquiries, WATS/800 has retained counsel to serve as the primary company contact.

Following discussions with staff exploring a basis for settlement, Fox proposed to make a payment of \$20,000 in lieu of a fine in settlement of all potential sanctions. It conditioned its proposal on the Commission's approval of the transfer of WATS/800's certificate to ITS, which is the subject matter of Issue 2. Fox explained that ITS is the successor to WATS/800 in the wake of the latter's Chapter 7 bankruptcy and that without ITS's ability to continue operations, it would be unable to make the proposed payment.

Staff believes that the proposed payment of \$20,000 in settlement is reasonable under the facts as they have been developed in response to the Commission's show cause order. Hence, staff recommends that the Commission accept Fox's proposal.

**ISSUE 2:** Should the Commission approve the transfer of Certificate No. 2929 from WATS/800, Inc., d/b/a ITS, d/b/a ITS Billing, Inc.,

d/b/a Information and Telephone Services, and d/b/a Fox Fiber Optics to ITS Billing, Inc., d/b/a ITS Billing, Inc., d/b/a ITS, d/b/a Information and Telephone Services, and d/b/a Fox Fiber Optics?

**RECOMMENDATION:** Yes. The Commission should approve the transfer of Certificate No. 2929 from WATS/800, Inc., d/b/a ITS, d/b/a ITS Billing, Inc., d/b/a Information and Telephone Services, and d/b/a Fox Fiber Optics to ITS Billing, Inc., d/b/a ITS Billing, Inc., d/b/a ITS, d/b/a Information and Telephone Services, and d/b/a Fox Fiber Optics. (Williams, Draper)

**STAFF ANALYSIS:** As noted in the Case Background, the creditors of WATS/800 worked out a reorganization plan in the company's Chapter 7 proceeding that provided for the assignment of the assets of WATS/800 to ITS to enable the company to continue operations. The plan received the bankruptcy court's approval.

Section 364.337, Florida Statutes, authorizes the Commission to grant a certificate to provide intrastate telecommunications service upon a showing of sufficient technical, financial, and management capability. Section 364.335, Florida Statutes, requires the Commission to act upon applications for certificate and for transfers of certificate in the interest of promoting the competitive provision of telecommunication services, and to apply the same criteria in both cases.

Staff has concluded that ITS has sufficient, although minimal, financial capability to satisfy the requirement of Section 364.337, Florida Statutes. See Attachment B. In a letter to staff dated March 17, 1998, ITS explained that its losses were largely attributable to high start-up costs incurred in launching a sweepstakes marketing campaign, which included extensive measures designed to avoid unauthorized Primary Interexchange Carrier (PIC) changes. ITS provided an income statement for the period February 7, 1997, to May 31, 1997, that shows a net loss of \$568,306 on revenues of \$1,337,321. See Attachment C. ITS abandoned the campaign, however, after only a few months when it failed to realize the revenues anticipated from it. ITS stated that it believed it was currently operating profitably. It argued that should the Commission not approve the transfer of WATS/800's certificate, the Commission would effectively revoke the certificate because of financial distress.

In a letter to staff dated May 29, 1998, ITS stated that since October 1997 it had been able to reduce expenses, build its customer base and achieve current profitability. See Attachment D.



It included summaries of cash receipts and disbursements showing cash flow of \$10,187 on receipts of \$280,872 for March 1998 and \$59,384 on receipts of \$279,032 for April 1998.

In a further letter to staff dated June 4, 1998, ITS argued that it has provided telecommunications services throughout 1997 and to the present time without significant complaint, despite financial problems, and has thereby satisfied the criteria of Section 364.337(3), Florida Statutes. See Attachment E. It included an income statement for the period February 7, 1997, to December 31, 1997, showing a net loss of \$1,089,419 on operating revenues of \$3,369,580. It also included a balance sheet showing assets of \$1,052,882 and shareholders' equity of (\$553,750).

Staff certainly harbors reservations concerning the financial capability of ITS. Staff is persuaded, however, by the company's current performance that it may be on track to resolving its financial problems reasonably soon. While still substantial, ITS's operating losses in the last six months of 1997 were markedly less as a per cent of revenues than in the preceding four months. Its current operations reflect positive cash flows. Thus, staff believes that ITS has demonstrated sufficient financial capability as required by Section 364.337(3), Florida Statutes. Despite its financial distress, ITS has provided services since February 1997 to an apparently increasing number of customers without any quality problems of which staff is aware. Staff recommends, therefore, that the Commission find that ITS has demonstrated sufficient technical, financial, and management capability to provide telecommunications services in Florida, and approve the transfer of Certificate No. 2929 from WATS/800 to ITS.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** No. With the approval of Issues 1 and 2, this docket should remain open pending the remittance of the \$20,000 payment in settlement within five business days after the order approving the settlement becomes final. Upon remittance of the \$20,000 payment, this docket should be closed. The \$20,000 payment should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. This docket should be closed following remittance of the payment if no person files a timely protest to the Commission's decision in Issue 2 pursuant to Rule 28-106.111, Florida Administrative Code. (Pellegrini)

DOCKET NOS. 961233-TI & 970650-TI  
DATE: July 09, 1998

**STAFF ANALYSIS:** If the Commission approves the staff recommendations in Issues 1 and 2, this docket should remain open pending the remittance of the \$20,000 payment in settlement. The payment should be remitted within five business days after the order accepting the settlement becomes final. This docket should be closed following remittance of the payment if no person files a protest to the Commission's decision in Issue 2 within 21 days of the issuance of the order.

ATTACHMENT A

**WIGGINS & VILLACORTA, P.A.**

ATTORNEYS AT LAW  
501 EAST TENNESSEE STREET  
POST OFFICE DRAWER 1657  
TALLAHASSEE, FLORIDA 32302

TELEPHONE (904) 222-1534  
TELECOPIER (904) 222-1688

July 25, 1997

VIA HAND DELIVERY

Mr. Charles Pellegrini  
Division of Communications  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: DOCKET NO. 961233-TI: In Re: Initiation of show cause proceedings against Fox Fiber Optics for violation of Rules 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required, and 25-4.043, Response to Commission Staff Inquiries.

Dear Mr. Pellegrini:

The purpose of this letter is to propose a settlement of the above show cause proceeding against Fox Fiber Optics (Respondent). As such, this communication is privileged and confidential,<sup>1</sup> and nothing herein may be viewed as an admission against interest or in any way used against Respondent if this dispute is not settled.

**Allegations**

The Show Cause Order alleges two violations by Respondent. First, it alleges that Respondent provided intrastate telecommunications services for hire within the State of Florida without certification to do so. Second, the Show Cause Order alleges that Respondent violated Rule 25-4.043 by knowingly and willfully refusing or failing to timely respond to inquiries propounded by staff.

On May 27, 1997, Respondent filed its Response to the Show Cause Order setting out its defenses to the two allegations, along with an explanation of the circumstances apparently triggering the

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<sup>1</sup> Respondent is not claiming protection from disclosure under the Public Records law, but rather protection against use of this communication against it if this matter cannot be settled.

Mr. Charles Pellegrini  
July 25, 1997  
Page 2

Commission's enforcement action. These defenses notwithstanding, Respondent's principal concern is to resolve this matter to the Commission's satisfaction and to ensure that its operations are in compliance with applicable Commission requirements. With this objective in mind and without admitting the alleged violations, Respondent would like to (1) recap and supplement its response to the allegations, and (2) state the specific terms of the proposed settlement.

#### RECAP OF RESPONSE TO ALLEGATIONS

##### Alleged Uncertificated Provision of Service

With respect to the first allegation, Respondent has explained that its management and principals were also the management and principals of WATS/800, which was doing business as Fox Fiber Optics. WATS/800 previously had been granted IXC authority and is the holder of Certificate Number 2929. All customers allegedly served by Respondent were in fact customers of WATS/800, a certificated interexchange carrier. These customers were assigned to the carrier identification code of WATS/800 and customer service was provided by WATS/800. Respondent's function was to market the services of the certificated carrier and it did so out of the same offices from which WATS/800 operated. In short, Fox Fiber Optics was intended to be a marketing arm of WATS/800, not a separate telecommunications company.

Respondent understands that the business relationship and functions between it and WATS/800 were confusing to the outside observer, and that the facts could support an inference that Respondent had itself become the provider in the eyes of the customer. As an ameliorating factor, however, this is not a case of an entity providing long distance service without regard to need for certification by the Commission. On the contrary, the management and principals of Respondent were the same persons who obtained the requisite certification for WATS/800, the entity for which they believed Respondent was marketing.

Sometimes a marketer of telecommunication services will cross the line between selling and providing and become an uncertificated provider. Although one could conclude that this is what Respondent did, such a conclusion would be a distortion of what actually happened. The better view is that WATS/800 began doing business under a fictitious name, "WATS/800, d/b/a Fox Fiber Optics" without giving notice to the Commission. To reiterate, Fox Fiber Optics had set itself up as an authorized sales agent for WATS/800 and was intended to be a marketing arm for that company. In any event, because this view better reflects the economic relationship between Respondent and WATS/800, the cure is not to have Respondent become



Mr. Charles Pellegrini  
July 25, 1997  
Page 3

certificated, but to reflect on Certificate Number 2929 that the holder is doing business under the fictitious name "Fox Fiber Optics."

Alleged Failure to Respond to Staff Inquiries

With respect to the second allegation, Respondent has explained that the notices sent by staff to Respondent were not directed to an officer of the company or any other authorized agent of the company. Rather, these notices were sent by certified mail to an employee, who is no longer with the company, Mr. Dennis Marshall. Mr. Damien Freeman, the chief executive officer for both Respondent and WATS/800, is personally frustrated that Respondent is viewed as non-responsive when neither he nor anyone else in Respondent's management was aware that staff inquiries had been received by an employee of the company.

If one views the response of WATS/800 to staff inquiries over the past two years, one does not find the company non-responsive. Thus, the regulatory history of WATS/800 supports Mr. Freeman's contention that the company did not fail to respond to any inquiry of which it was aware.

**PROPOSED SETTLEMENT**

Although this is a complicated case in some respects, the objective here is straightforward: to resolve to the Commission's satisfaction the show cause proceeding and to insure that the holder of Certificate Number 2929 provides service only under names on file with the Commission and reflected on the certificate. Our proposed plan for achieving this resolution and result involves only two steps, although the second step is not typical.

Step 1: \$20,000 Payment

First, Respondent proposes to make a \$20,000 payment to the State of Florida in lieu of a fine in settlement of all potential sanctions that might be imposed as a result of the violations alleged the Show Cause Order. This amount appears consistent with the emerging trend of Commission fines and settlements given the context of the alleged violations.

Step 2: Certificate Transfer

Second, Respondent proposes that Certificate Number 2929 be transferred from "WATS/800 d/b/a ITS Billing" to "ITS Billing, Inc. and d/b/a Information and Telephone Services and d/b/a ITS and d/b/a Fox Fiber Optics" ("ITS Billing"). ITS Billing involves the same principals as WATS/800. This transfer, with the appropriate

Mr. Charles Pellegrini  
July 25, 1997  
Page 4

ATTACHMENT A

recognition of the fictitious names, would ensure that the marketing activities of Respondent would not place it in jeopardy of being viewed as providing telecommunications services while avoiding confusion over its relationship to the certificate holder. For example, if a consumer called the Commission with an inquiry about "Fox Fiber Optics," the Commission's records would reflect that ITS Billing Inc. offers services under this fictitious name. ITS Billing has already applied for this transfer, and the request has been assigned Docket Number 970650-TI - Request for name change on Interexchange Telecommunications Certificate No. 2929 from WATS/800, Inc. d/b/a ITS Billing to ITS and d/b/a ITS Billing and d/b/a Information and Telephone Services and d/b/a Fox Fiber Optics.

Typically in resolving a show cause action for uncertificated provision of service the second step would involve a simple grant of a certificate to the respondent so that future provision of service is authorized and complies with all applicable regulations. In this case, however, Respondent has no desire to be a telecommunications company but rather would simply market for the certificate holder. Moreover, a transfer of the certificate is necessary because WATS/800, the current certificate holder, has been declared bankrupt (Chapter 7) and pursuant to a settlement agreement among the creditors and approved by the Bankruptcy Court, its assets have been assigned to ITS Billing Inc., which will provide intrastate service upon transfer of the certificate.

Although this second step involves two entities other than Respondent, it is an essential part of the settlement. With this transfer, customers can continue to receive bills under the service mark "Fox Fiber Optics" without Respondent being viewed as providing uncertificated service. Also, with this transfer, a new, financially solvent entity can ensure continuity of service to customers while expanding its operations. Moreover, the continuation of the business by ITS Billing is a critical factor in the ability of Fox Fiber Optics to pay the proffered \$20,000.

#### **FINANCIAL, TECHNICAL AND MANAGERIAL FITNESS OF ITS BILLING**

I have avoided a discussion of how WATS/800 became financially distressed because it is not germane and because this is the subject of a lawsuit brought by WATS/800 against its underlying carrier and others. It might be useful, however, to make two observations. First, although WATS/800's financial condition was precarious during the time Respondent was marketing its services, neither WATS/800 nor Respondent resorted to "slamming schemes" to generate needed traffic and revenue. Indeed, the show cause action here focuses on unauthorized provision of service and failure to respond to staff inquiries, not customer deception. The level of

Mr. Charles Pellegrini  
July 25, 1997  
Page 5

customer complaints against WATS/800 is within industry norms; in short, one would not suspect from the customer complaint activity that WATS/800 was in financial distress. I believe this supports the view that the management of WATS/800 and Fox Fiber Optics conducted their activities in good faith.

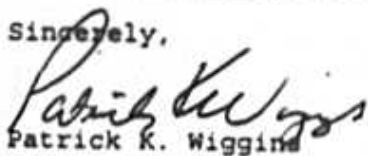
Second, the corporate reorganization decision to transfer assets from WATS/800 to ITS Billing Inc. was hammered out by creditors and effected by order of the bankruptcy court. Because of this and because the management of WATS/800 provided quality service during a period of distress, I believe it reasonable to conclude that ITS Billing, as an applicant for authority under the same basic management, is financially, technically, and managerially fit to provide telecommunications service in the State of Florida.

#### Conclusion

In conclusion, Respondent regrets any confusion that has occurred as a result of the dual use of the name and service mark "Fox Fiber Optics." Respondent also regrets that internal miscommunication concerning staff inquiries has resulted in inconvenience to the Commission. Respondent and its principals reaffirm their commitment to full compliance with all applicable Commission regulations. Thus, we are hopeful that staff and the Commission will find this good faith offer of settlement acceptable and in the public interest.

Please contact me if any additional information is required.

Sincerely,

  
Patrick K. Wiggins

cc: Tom Williams

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

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DATE: June 18, 1998  
TO: Tom Williams, Division of Communications  
FROM: David J. Draper, Regulatory Analyst II, Division of Auditing & Financial Analysis *DFC*  
RE: Docket No. 970650-TI, ITS Billing, Inc., Financial Analysis for Certificate Application for Intrastate Interexchange Telecommunications Service

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Section 364.337 (3), Florida Statutes, requires the following:

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 capability to provide such service in the geographic area proposed to be served.

Also Section 364.01 (3) and (4) states that:

- (3) The Legislature finds that the competitive provision of telecommunications service, including local exchange telecommunications service, is in the public interest.
- and
- (4)(d) The Commission shall exercise its exclusive jurisdiction in order to: (d) Promote competition by encouraging new entrants into telecommunications markets ...

Regarding the showing of financial capability, the Finance staff has analyzed the unaudited balance sheet and the eleven month income statement of ITS Billing, Inc. (ITS) for the period ending December 31, 1997. An audit could change one's opinion of the company's financial condition. As the attached schedule shows, ITS has minimal liquidity, negative common equity, and reported a negative net income for the period.

In this matter, ITS is asking for a certificate to provide IXC service. For purposes of granting a certificate based on the financial information provided, the financial capability appears minimal.

Although an analysis of the financial statements reveals the applicant is in a minimal financial position, the applicant attests to its financial capability to provide and maintain the proposed telecommunications service by noting that ITS has previously been certificated as WATS/800 and has successfully provided service during 1997. ITS is the surviving company out of a bankruptcy agreement with WATS/800. Staff understands that no customers were harmed or had services interrupted during these bankruptcy proceedings. Fox Fiber Optics was an entity set up to sell services for WATS/800. On May 5, 1997, in Docket No. 961233-TI, the Commission issued Order No. PSC-97-0511-FOF-TI, in which it ordered Fox Fiber Optics to show cause why it should not be fined \$100,000 for violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and be fined \$25,000 for violation

Page 2

of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. On May 27, 1997, Fox filed a response to the Commission's Order and requested a hearing pursuant to Section 120.57, Florida Statutes. After meeting with the company, Staff has agreed to recommend to the Commission a proposal in which the company would pay \$20,000 in fines and certificate number 2929 would be transferred from WATS/800 to ITS.

Staff certainly harbors reservations concerning the financial capability of ITS. Staff is persuaded, however, by the company's current performance that it may be on track to resolving its financial problems reasonably soon. While still substantial, ITS's operating losses in the last six months of 1997 were markedly less as a per cent of revenues than in the preceding four months. Its current operations reflect positive cash flows. Thus, staff believes that ITS has demonstrated sufficient financial capability as required by Section 364.337(3), Florida Statutes. Despite its financial distress, ITS has provided services since February 1997 to an apparently increasing number of customers without any quality problems of which staff is aware. Staff recommends that based on these representations, the applicant has the minimal financial capability to meet the requirements of Section 364.337, Florida Statutes.

cc: Division of Legal Services  
Division of Records and Reporting (2)



DOCKET NO. 970650-TI  
ITS BILLING, INC.

IXC TELECOMMUNICATION SERVICE  
FINANCIAL ANALYSIS

FROM UNAUDITED FINANCIAL STATEMENTS

	AS OF 12/31/97
CURRENT ASSETS	\$247,248
CURRENT LIABILITIES	1,606,632
CURRENT RATIO	0.15
CASH	44,797
COMMON EQUITY	(553,750)
TOTAL DEBT	0
TOTAL INVESTOR CAPITAL	(553,750)
COMMON EQUITY RATIO	NMF
NET INCOME FOR ELEVEN MONTHS, 02/97-12/97	(1,089,419)
RETURN ON EQUITY	NMF

NMF = No Meaningful Figure

DOCKET NOS. 961233-TI & 970650-TI  
DATE: July 09, 1998

ATTACHMENT C

POST OFFICE DRAWER 1887  
TALLAHASSEE, FLORIDA 32302

WIGGINS & VILLACORTA, P.A.  
ATTORNEYS RECEIVED

2148 DELTA BOULEVARD, SUITE 200  
TALLAHASSEE, FLORIDA 32302  
MAR 18 8 25 AM '98

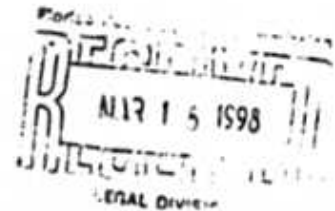
TELEPHONE (850) 388-8007  
FACSIMILE (850) 388-8008  
INTERNET: wggv@a.netally.com

ADMINISTRATIVE  
MAIL ROOM

March 17, 1998

VIA FACSIMILE AND U.S. MAIL

Mr. Charles Pellegrini  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850



Re: DOCKET NO. 961233-TI: In Re: Initiation of show cause proceedings against Fox Fiber Optics for violation of Rules 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required, and 25-4.043, Response to Commission Staff Inquiries.

**Additional Background on ITS Billing, Inc.**

Dear Mr. Pellegrini:

The purpose of this letter is to provide additional background on the financial history of ITS Billing, Inc., which has applied for the transfer of Certificate Number 2929 from WATS/800, the current holder. As you are aware, the certificate transfer is a key step in the settlement of the show cause proceeding in Docket No. 961233-TI. I am providing this explanation because AFAD has expressed reservations about the financial integrity of ITS Billing, Inc., and is reluctant to recommend that ITS Billing be certificated by transfer of certificate or otherwise.

My understanding is that the major concern of AFAD is that the attached income statement of ITS Billing Inc. reflects large losses for a relatively short period. There are two responses I can provide that will hopefully reassure AFAD.

**ITS BILLING USED AN EXPENSIVE MARKETING STRATEGY TO JUMP  
START ITS BUSINESS**

First, these losses were due primarily to the start-up costs of initiating an aggressive, high-quality sweepstakes marketing campaign. As you will see, almost 80% of the Total Operating Expense was due to three categories of expenses: gross payroll and taxes; marketing, advertising and BNA information; and software, equipment and depreciation. The level of expense for each of these categories was either primarily or significantly driven by the sweepstakes program.

Mr. Charles Pellegrini  
March 17, 1998  
Page 2

In undertaking the sweepstakes program to build up quickly its customer base, ITS Billing was well aware of the problems attendant to sweepstake generated LOAs. ITS Billing, therefore, implemented a "Cadillac" marketing program to avoid unauthorized PIC conversions, other types of consumer complaints and customer churn. Although this expensive marketing approach did avoid the level of consumer complaints that have plagued some other companies, unfortunately it did not generate the level of revenues management had anticipated. Consequently, ITS Billing discontinued its sweepstakes approach last summer and began the process of trimming expenses while it patiently increased its revenues.

In sum, ITS Billing opted to use an expensive approach to "jump start" its business by quickly building a larger customer base. Although this approach put ITS Billing into debt initially and the customer base produced was not as large as expected, this approach nonetheless provided the customer base from which to grow and to produce a revenue stream to become profitable.

**ITS BILLING IS APPARENTLY NOW OPERATING AT A PROFIT**

The second reason is that ITS Billing appears to be operating at a profit. This representation is based on the financial officer's preliminary assessment of the data. ITS Billing will be able to produce a more current income statement in April 1998, and anticipates that this new statement will reflect that it operates at a profit.

**PROPOSED APPROACH: APPROVE TRANSFER OF CERTIFICATE WITH FINANCIAL REPORTING REQUIREMENTS**

Because of the unique circumstances of this case and the settlement, denying the transfer of the certificate from WATS/800 to ITS Billing would be tantamount to revoking a certificate of a company because of financial distress. This would be most unfortunate because ITS Billing has demonstrated that it can persevere through lean times without sacrificing its commitment to providing quality service to its customers. Thus, I would like to suggest an approach that would allow the transfer to be approved notwithstanding AFAD's concerns.

I propose that the transfer be approved, but as a condition of the approval that ITS Billing be required during 1998 to submit quarterly and year-end financial statements to the Commission. By monitoring these financial statements and any customer complaints filed with the Division of Consumer Affairs, the Commission can ensure that ITS Billing is providing intrastate telecommunications service consistent with the public interest. In addition, this approach would avoid subjecting inadvertently ITS Billing to discriminatory regulation, i.e., it would avoid effectively

ATTACHMENT C

Mr. Charles Pellegrini  
March 17, 1998  
Page 3

revoking a certificate simply due to the company's financial distress, a regulatory measure the Commission has never before taken.

I hope that staff finds this approach satisfactory. Please contact me if any additional information is required.

Sincerely,

  
Patrick Knight Wiggles

Attachment

DEC-03-1997 11:25

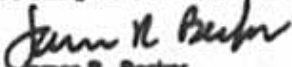
P. 03

**ITS BILLING INC.  
INCOME STATEMENT  
FOR THE PERIOD FEBRUARY 7 TO MAY 31, 1997**

	<u>FEB 7, 1997- MAY 31, 1997</u>
<b>OPERATING REVENUE</b>	
<b>USAGE BILLED:</b>	
ITS	\$ 1,006,288
USBI	143,740
MONTHLY FEES	6,091
BILLING SERVICE FEES, ETC	182,224
<b>TOTAL OPERATING REVENUE</b>	<u>\$ 1,337,321</u>
<b>COST OF REVENUE</b>	
CARRIER CHARGES	\$ 686,668
SWITCHING & NETWORK	188,400
<b>TOTAL COST OF REVENUE</b>	<u>\$ 765,068</u>
<b>GROSS PROFIT</b>	<u>\$ 582,253</u>
<b>OPERATING EXPENSES</b>	
GROSS PAYROLL & TAXES	\$ 588,211
RECRUITING, EMPLY. ADVERTISING, ETC.	12,046
HEALTH INSURANCE	14,422
MARKETING, ADVERTISING, ETC.	228,001
BUILDING RENT, ELECTRIC & AMORT.	46,733
TELEPHONE	18,986
TRAVEL, SEMINARS	33,449
SOFTWARE, EQUIPMENT & DEPR.	100,289
LEGAL, TARIFF & TAX	58,371
SUPPLIES, POSTAGE & BILLING	32,164
MISCELLANEOUS	18,027
<b>TOTAL OPERATING EXPENSES</b>	<u>\$ 1,148,377</u>
<b>OPERATING INCOME (LOSS)</b>	\$ (588,124)
<b>OTHER INCOME (EXPENSE)</b>	(2,182)
<b>NET INCOME (LOSS)</b>	<u>\$ (588,506)</u>

I hereby affirm that the above statement of ITS Billing Inc. is true and correct.

  
Darnain T. Freeman,  
Chief Operating Officer

  
James R. Becker,  
Treasurer



POST OFFICE DRAWER 1857  
TALLAHASSEE, FLORIDA 32302

WIGGINS & VILLACORTA, P.A.  
ATTORNEYS AT LAW  
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TALLAHASSEE, FLORIDA 32303

TELEPHONE (850) 385-6007  
FACSIMILE (850) 385-6008  
INTERNET: WIGGINS@villacortap.com

May 29, 1998

VIA FACSIMILE AND U.S. MAIL

Mr. David Draper  
Division of Auditing & Financial Analysis  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: ITS Billing, Inc.

Dear David:

The purpose of this letter is to provide you with a brief narrative supplement to the cash flow summary I provided to you by separate transmission.

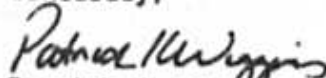
In December 1997, as you may recall, I reported that the company was operating under a plan to achieve profitability "in the foreseeable future." According to the company and as reflected by the cash flow summary, profitability was achieved in March.

Since October of 1997, the company has been able to reduce expenses and make modest but consistent increases in the number of customers and monthly billings. At present the company is continuing to reduce its network costs and is finalizing an agreement that will begin adding a significant number of customers during the next month. In short, the company appears to have "turned the corner" and is on the way to sustained profitability.

I recognize that this situation has been frustrating for you, and both the company and I appreciate your patience. I am particularly grateful that the extensions have afforded ITS Billing the opportunity to demonstrate its financial capability to provide intrastate interexchange service.

I hope that you that this additional information is sufficient. Thank you again for your patience and consideration. Please call if you have any questions.

Sincerely,

  
Patrick K. Wiggins

FILE No. 451 05/29 '98 16:31 ID:WIGGINS-VILLACORTA

1 850 385 6008

PAGE 1

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TELECOPY

DATE : 5/29  
TO : CHARLES PELLIGRINO ; DAVID DRAPER  
FROM : PATRICK K. WIGGINS PKW

THIS TELECOPY CONSISTS OF 2 PAGE(S) INCLUDING THIS COVER PAGE.  
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PLEASE CALL (850) 385-6007.

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CALL IF QUESTIONS.

05/29/1998 03:05 4878775488

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PAGE 02

ITS BILLING INC.		
SUMMARY OF CASH RECEIPTS & DISBURSEMENTS		
	MARCH	APRIL
	(CASH)	(CASH)
<b>CASH RECEIPTS:</b>		
Florida Accounts	\$ 272,189	\$ 255,823
USBI (net of billing fees, etc.)	19,472	23,083
Loans		
Other	5,658	14,878
<b>Total Cash Received</b>	<b>297,328</b>	<b>293,884</b>
Less Sales & Excise Tax Paid	16,657	14,662
<b>Net Cash Receipts</b>	<b>280,671</b>	<b>279,222</b>
<b>CASH DISBURSEMENTS:</b>		
<b>P &amp; L ITEMS-</b>		
REVENUE REFUNDS	927	741
LONG DISTANCE CARRIERS	63,789	70,288
NETWORK EXPENSES	32,498	30,879
FEATURE GROUP D COSTS	73,287	11,624
PAYROLL (incl. Taxes)	34,012	43,078
COMMISSIONS	4,288	6,018
EQUIPMENT & SOFTWARE	8,815	8,418
OUTSIDE SERVICES	9,848	17,766
TRAVEL	588	543
POSTAGE & SHIPPING	2,278	2,188
SALES & MARKETING	6,881	8,337
OCCUPANCY	4,804	5,121
LOCAL TELEPHONE, PAGING	4,897	2,018
SUPPLIES	2,636	542
MEDICAL CLAIMS	3,921	1,604
INTEREST EXPENSE	7,500	-
MISCELLANEOUS	781	1,880
<b>TOTAL P &amp; L ITEMS</b>	<b>281,885</b>	<b>208,898</b>
LOANS	8,000	9,750
<b>TOTAL EXPENDITURES</b>	<b>270,885</b>	<b>218,648</b>
<b>INCREASE/(DECREASE) IN CASH</b>	<b>\$ 10,187</b>	<b>\$ 60,574</b>

DOCKET NOS. 961233-I & 970650-TI  
DATE: July 09, 1998

ATTACHMENT E

FILE No. 509 06/04 '98 15:36 ID:WIGGINS-VILLACORTA

1 850 385 6008

PAGE 1

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INTERNET: wiggins@netbar.com

TELECOPY

DATE : 6-4-98  
TO : CHARLES PELLEGRE (413-6250)  
FROM : PATRICK K. WIGGINS

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THIS TELECOPY CONSISTS OF 5 PAGE(S) INCLUDING THIS COVER PAGE.  
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\*\*\*\*\*

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June 4, 1998

VIA FACSIMILE AND U.S. MAIL

Mr. David Draper  
Division of Auditing & Financial Analysis  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Mr. Charles Pellegrini  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: ITS Billing, Inc.

Dear David and Charlie:

The purpose of this letter is to provide staff the 1997 year-end financial statements of ITS Billing, Inc. These statements continue to reflect the operating losses for the company experienced during the first three quarter of 1997. However, as reflected in the cash flow summary for March and April provided to staff last week, the Company appears to have recently achieved its goal of consistent and ongoing profitability.

My understanding, David, is that with these financial statements you find yourself unable to recommend approval of the application. Allow me to address this issue briefly.

Section 364.0337(3), Florida Statutes, provides as follows:

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 capability to provide such service in the geographic area proposed to be served.

Given that ITS Billing has successfully provided service during 1997 despite its financial problems, there can be no reasonable debate that this company has made the requisite showing that it is capable of providing the proposed service.

If ITS Billing were attempting to obtain an initial certificate with these financial, I believe it would be difficult to show the requisite capability. If that is your problem, I agree



Mr. David Draper  
Mr. Charles Pellegrini  
ITS Billing  
June 4, 1998  
Page 2

with you. But, of course, this really is not an initial application. Rather it represents the culminating step of a bankruptcy proceeding designed to allow an ongoing certificated carrier to survive. Under these unique circumstances, snapshots of the company's financial condition are not relevant to the issue of capability of providing service except to the extent they show a trend. And based on the trend shown for ITS Billing, the most supportable projection is that it will continue to be capable of providing the proposed service.

I certainly hope staff agrees with this perspective. We would very much like to have a staff recommendation of approval. To achieve this, ITS Billing would consent to conditional approval, as well as continued reporting requirements. Nevertheless, even if staff cannot find a way to recommend approval, I think it's time to take this matter to agenda and allow the commissioners to decide.

Thank you again for your cooperation and patience. I am confident that one way or another, this matter will be resolved appropriately.

Sincerely,

  
Patrick Knight Wiggins

**ITS BELLINI INC.  
 BALANCE SHEET  
 DECEMBER 31, 1997**

<b>ASSETS</b>		
Cash		\$ 44,707.19
Accounts Receivable:		
USD	82,004.41	
Florida State	190,007.47	
	<u>272,011.88</u>	
Reserve for Uncollectibles	84,370.51	
Total Current Assets		<u>\$ 329,451.87</u>
<b>Fixed Assets:</b>		
Leasehold Improvements	16,000.00	
Network Hardware	45,000.00	
Building & Circuit Equip.	20,000.70	
Software	2,700.41	
Personal Computers	21,000.00	
Other PER, Telephones, etc.	20,000.00	
Printers	12,000.00	
Modem/PC & Printer	10,000.00	
Artwork, Rugs, etc.	4,000.00	
Kitchen Equipment	4,000.00	
Furniture & Fixtures	16,700.00	
Vehicles, etc.	-	
Reserve For Depreciation		107,430.40
Net Fixed Assets		<u>(40,321.40)</u>
		148,147.88
<b>Other Assets:</b>		
Customer Base	410,000.00	
Deposits	64,040.30	
Prepaid Rent	32,101.00	
Other Prepaids	12,000.00	
Other	2,170.00	
Employee Receivables	100,000.00	
Prepaid Insurance, etc.	0,470.00	
		<u>609,481.30</u>
Total Assets		<u>\$ 1,000,000.10</u>
<b>LIABILITIES</b>		
Accounts Payable	637,000.00	
Accrued Network Cost	120,075.00	
Accrued Legal Fees	110,000.00	
Accrued Taxes	170,000.00	
Short-Term Notes Payable	400,000.00	
Accrued Interest	20,000.00	
Other Accounts	60,000.00	
Maintenance Accounts	60,000.00	
Total Liabilities	<u>1,600,001.00</u>	1,600,001.00
<b>SHAREHOLDER'S EQUITY</b>		
Common Stock-25,000 Shares Authorized, 10,000 Shares Issued and Outstanding	1,000.00	
Paid in Capital	604,000.00	
Year-to-date Net Income (Loss)	<u>(1,000,410.17)</u>	
Total Shareholder's Equity		<u>(395,410.17)</u>
Total Liabilities & Shareholder's Equity	- 25 -	<u>\$ 1,000,000.10</u>