



# Public Service Commission

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RECORDS AND REPORTING

**DATE:** DECEMBER 22, 1998

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

**FROM:** DIVISION OF LEGAL SERVICES (KEATING) *MLC MCB*  
DIVISION OF COMMUNICATIONS (WILLIAMS) *WJH*

**RE:** DOCKET NO. 961309-TI: 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.

**AGENDA:** <sup>05 (RAR)</sup> 01/19/99 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\961309.RCM

### CASE BACKGROUND

In Order No. PSC-97-0937-FOF-TI, issued August 5, 1997, the Commission ordered Vendormatic, Inc., d/b/a HSS Vending Distributors (HSS), to show cause why it should not be fined in the amount of \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. At the same time, in a proposed agency action, the Commission also granted HSS a certificate to provide interexchange telecommunications service, but held the certificate in abeyance pending the resolution of the show cause proceeding.

On August 26, 1997, HSS filed a Response to Order to Show Cause (response). In the response, HSS requested that the proposed

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fine not be assessed and that a formal hearing be initiated before any such assessment. On the same date, HSS filed a Petition for Formal Proceeding (petition) pursuant to Section 120.57, Florida Statutes, with respect to that portion of the Commission's order holding HSS's certificate in abeyance.

With its response and petition, HSS filed a Motion to File Response and Petition Out of Time (motion). In fact, HSS's petition for a formal proceeding on the Commission's proposed agency action was timely filed. Its response to the Commission's show cause order was filed one day late.

The company explained that the Commission's order was mailed on August 6, 1997, to an old address in Coraopolis, Pennsylvania, forwarded to a new address in Moon Township, Pennsylvania on August 12, 1997, and received on August 25, 1997. The company served its response and petition by facsimile on August 25, 1997, and by overnight delivery on August 26, 1997.

It appeared that HSS conducted itself with due diligence under the circumstances and that no prejudice to the interests of others will result from filing its response one day late. The motion, therefore, was granted on October 9, 1997. On October 29, 1997, staff mailed a letter to HSS's attorney, Mr. Stephen Jurman, listing staff's preliminary issues for the hearing.

On February 10, 1998, a letter was received from Mr. Jurman offering a \$5,000 settlement. (See Attachment A) Staff attempted to contact Mr. Jurman several times concerning HSS's settlement offer. Finally, staff sent a letter to the company on June 15, 1998. Staff received no response to the letter. Then, on October 14, 1998, Mr. Jurman informed staff that he no longer represents HSS. Mr. Jurman indicated that staff should contact the company.

Staff called the company on three separate occasions in an effort to find out who now represents the company and to further discuss HSS's settlement offer and request for hearing. Staff received no response from HSS. Therefore, staff sent a certified letter to the company's president, Mr. Richard Hersperger, on October 26, 1998. The receipt for the letter was never received, so staff sent another letter to the company on December 1, 1998, in an abundance of caution. On December 14, 1998, staff received by return mail the certified letter addressed to Mr. Richard G. Hersperger, 601 Fourth Ave., Coraopolis, PA 15108. The U.S. Post Office indicated that the certified letter had been refused.

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In view of staff's inability to contact the company, this is staff's recommendation on HSS's February 10, 1998, settlement offer.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission accept HSS Vending's February 10, 1998, offer of settlement as a resolution of the show cause proceedings initiated by Order No. PSC-97-0937-FOF-TI?

**RECOMMENDATION:** No. Staff recommends that the Commission reject HSS Vending's offer of a \$5,000 payment as settlement of the show cause proceedings against it.

**STAFF ANALYSIS:** In Order No. PSC-97-0937-FOF-TI, issued August 5, 1997, the Commission ordered Vendormatic, Inc., d/b/a HSS Vending Distributors (HSS), to show cause why it should not be fined in the amount of \$25,000 for violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. It appeared that HSS was operating without a certificate through a national sweepstakes drawing that offered a travel calling card and the opportunity to win various prizes. At the same time, in proposed agency action, the Commission also granted HSS a certificate to provide interexchange telecommunications service, but held the certificate in abeyance pending the resolution of the show cause proceeding.

On August 26, 1997, HSS filed its response to the Order to Show Cause. HSS also filed a separate Petition for Formal Proceeding. This matter was, therefore, set for hearing on May 1, 1998. Subsequently, on February 10, 1998, HSS offered to pay \$5,000 as settlement of the show cause proceedings against it. Staff was unsuccessful in numerous attempts to contact the company or counsel for the company regarding its offer.

Staff does not believe that HSS's offer to pay \$5,000 is sufficient in view of the number of complaints that were received from customers. The Division of Consumer Affairs had logged 60 complaints against the company. Staff recommends, therefore, that HSS's offer of settlement be rejected.

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**ISSUE 2:** Should the Commission reschedule this matter for hearing?

**RECOMMENDATION:** Yes. HSS's August 26, 1997, Petition for Formal hearing has not been resolved. Therefore, this matter should be rescheduled for hearing.

**STAFF ANALYSIS:** HSS's August 26, 1997, Petition for Formal hearing has not been resolved. Therefore, this matter should be rescheduled for hearing.

Staff emphasizes, however, that if HSS fails to comply with the appropriate filing and procedural dates of the hearing schedule, staff will file a recommendation to cancel the hearing, assess the fine, and cancel Certificate No. 4801.

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

**RECOMMENDATION:** No. This Docket should be reset for hearing and remain open pending the outcome of the hearing.

**STAFF ANALYSIS:** No. This Docket should be reset for hearing and remain open pending the outcome of the hearing.

ATTACHMENT  
DOCKET NO. 961309-TI  
DATE: December 20, 1998

**STEPHEN JURMAN**  
ATTORNEY AT LAW  
114 Portvue Drive  
Moon Township, PA 15108

February 2, 1998

State of Florida  
Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Attention: Charles J. Pellegrini  
Staff Counsel

Re: Docket No. 961309-TI  
Vendormatic, Inc.

Dear Mr. Pellegrini

Thank you for your courtesy in our discussions. I have reviewed the file of Vendormatic, Inc. with respect to the two proceedings pending at the above-referenced docket number. As we have discussed, since my client did, albeit through an independent marketer, market calling cards in Florida prior to the issuance of its certificate of public convenience and necessity, the question remaining is a legal one, that is, whether such activity constitutes a violation of Rule 25-24.470. The subsidiary questions become what sanction would be appropriate, and whether the issuance of the certificate subsequently approved should be conditional upon such a sanction.

The testimony and exhibits of my client would show that its marketing was performed solely by an independent contractor, which was directed to cease marketing in Florida when this complaint was called to the client's attention. It would also show that full refunds or credits were arranged for any calling card applicant who complained with regard to the product. This evidence, of course, goes to mitigation rather than whether there was a violation in the first instance. It also constitutes rebuttal, rather than case in chief.

This issue appearing to be more a matter of the appropriate sanction to apply, rather than liability in the first instance (though that is not admitted hereby), Vendormatic would offer to compromise and settle the proceedings by paying \$5,000.00.

If this letter to you is not the proper method for making such an offer of compromise, please advise me to whom it should be directed.

Thank you.

Very truly yours,

  
Stephen Jurman, Esq.

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Phone: (412) 262-2575  
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