

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-99-1876-PAA-TI
ISSUED: September 21, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

FINAL ORDER DISMISSING PETITION FOR HEARING AND ASSESSING FINE,
AND NOTICE OF PROPOSED AGENCY ACTION ORDER
DENYING APPLICATION FOR IXC CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding our denial of an application for a certificate 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.

I. Dismissal of Petition for Hearing and Assessment of Fine

In Order No. PSC-97-0937-FOF-TI, issued August 5, 1997, we ordered Vendormatic, Inc., d/b/a HSS Vending Distributors (HSS), to

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show cause why it should not be fined in the amount of \$25,000 for operating without a certificate, in 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, we 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 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. Thereafter, this matter was scheduled for hearing.

On February 10, 1998, our staff received a letter from Mr. Jurman offering a \$5,000 settlement. As a result, we canceled the hearing so that the settlement offer could be reviewed. Thereafter, our staff attempted to contact Mr. Jurman several times concerning HSS's settlement offer. Finally, our staff sent a letter to the company on June 15, 1998. No response was received. Then, on October 14, 1998, Mr. Jurman informed our staff that he no longer represents HSS. Mr. Jurman indicated that any future contact should be made directly with the company.

Our staff called the company on three separate occasions in an effort to determine the company's representative and to further discuss HSS's settlement offer and request for hearing. We received no response from HSS. Therefore, our 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 our staff sent another letter to the company on December 1, 1998, in an abundance of caution. On December 14, 1998, the certified letter addressed to Mr. Richard G. Hersperger, 601 Fourth Ave., Coraopolis, PA 15108, was returned. The U.S. Post Office indicated that the certified letter had been refused.

By Order No. PSC-99-0125-PCO-TI, issued January 22, 1999, we rejected HSS Vending's settlement offer and reset this matter for hearing on HSS Vending's Petition for Formal Proceeding.

By Order No. PSC-99-0443-PCO-TI, issued March 4, 1999, and Order No. PSC-99-0704-PCO-TI, issued April 13, 1999, the procedure

for this docket was outlined, and the hearing and prehearing dates were established. HSS Vending has failed to comply with these Orders and did not appear at the July 30, 1999, prehearing conference. In view of HSS Vending's failure to pursue its Petition for Formal Hearing with any diligence whatsoever, we hereby dismiss, on our own motion, HSS Vending's Petition for Formal Hearing.

In addition, we note that HSS Vending alleged in its Response to our Order to Show Cause that it had directed its contractor to stop marketing its calling card application in Florida. HSS Vending indicated that any subsequent solicitation of customers was done without the company's knowledge. HSS Vending added that it believed that further complaints arose from customers that received billings a month after the solicitations. Therefore, HSS Vending asked that the fine not be assessed.

We do not believe that HSS Vending has shown cause why it should not be fined for operating without a certificate. By its response, HSS Vending actually concedes that it was operating and billing in Florida without a certificate. Accordingly, by Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of this Commission, or any provision of Chapter 364. Utilities are charged with knowledge of our rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404,411 (1833). Furthermore, in Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating to Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order the company to show cause why it should not be fined, stating that, "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Similarly, we find that HSS Vending's solicitation of customers in Florida clearly demonstrates "willful" violation of Rule 25-24.470, Florida Administrative Code. HSS Vending has submitted nothing to demonstrate otherwise. Therefore, we hereby order HSS Vending to pay the \$25,000 fine identified in Order No. PSC-97-0937-FOF-TI. If the fine is not received within

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10 days of the issuance of this order, the fine shall be forwarded to the Office of the Comptroller for further collection efforts.

PROPOSED AGENCY ACTION

II. Denial of Application for Certificate

On November 1, 1996, HSS Vending applied for a certificate of public convenience and necessity. As explained above, by Order No. PSC-97-0937-FOF-TI, issued August 5, 1997, we granted HSS Vending a certificate, but held the issuance of the certificate in abeyance pending the resolution of the show cause proceeding. When HSS filed its August 26, 1997, Petition for Formal Proceeding protesting that portion of our order holding HSS's certificate in abeyance, the PAA portions of Order No. PSC-97-0937-FOF-TI granting the certificate application and holding it in abeyance were rendered a nullity.

HSS Vending has failed to diligently pursue its Petition for Formal Hearing and has had no contact with this Commission in over a year. In accordance with the Order Establishing Procedure for this Docket, Order No. PSC-99-0443-PCO-TI, HSS Vending has waived the right to present any testimony and to raise any additional issues. Therefore, we shall also deny HSS Vending's November 1, 1996, application for a certificate of public convenience and necessity. In view of HSS Vending's actions in this case and its failure to respond to our staff, we now find it appropriate to deny the company's application.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the August 26, 1997, Petition for Formal Proceeding filed by Vendormatic, Inc., d/b/a HSS Vending Distributors is hereby dismissed. It is further

ORDERED that Vendormatic, Inc., d/b/a HSS Vending Distributors shall pay the \$25,000 fine identified in Order No. PSC-97-0937-FOF-TI. It is further

ORDERED that if the fine is not received within 10 days of the issuance of this Order, the fine shall be forwarded to the Office of the Comptroller for further collection efforts. It is further

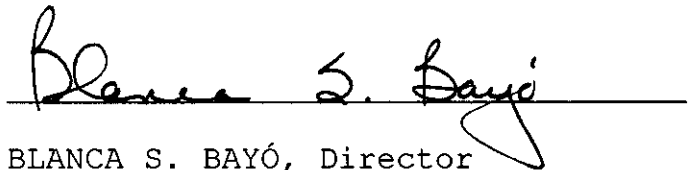
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ORDERED that the application for a certificate to provide interexchange telecommunications services by Vendormatic, Inc., d/b/a HSS Vending Distributors is hereby denied. It is further

ORDERED that the provisions of this Order regarding our denial of Vendormatic, Inc., d/b/a HSS Vending Distributors's application for a certificate is issued as proposed agency action, and shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, 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" attached hereto. It is further

ORDERED that in the event the proposed agency action portion of this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st Day of September, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/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 after the issuance 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.

The action proposed herein regarding denial of an application for a certificate is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 October 12, 1999.

In the absence of such a petition, the proposed agency action portions of this order shall become final and effective upon the issuance of a Consummating Order.

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.