

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide interexchange telecommunications service and petition for waiver of bond requirement, by Williams Communications, Inc. d/b/a Vyvx, Inc.

DOCKET NO. 980697-TI
ORDER NO. PSC-98-1141-FOF-TI
ISSUED: August 24, 1998

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING CERTIFICATE TO PROVIDE
INTEREXCHANGE TELECOMMUNICATIONS SERVICE AND
PETITION FOR WAIVER OF RULE 25-24.490(2),
FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that 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.

On May 28, 1998, Williams Communications, Inc d/b/a Vyvx, Inc., (Williams) filed an application to provide interexchange telecommunications service (IXCs) and a petition to waive Rule 25-24.490(2), Florida Administrative Code.

Pursuant to Section 364.337(3), Florida Statutes, an applicant is required to show that it has sufficient technical, financial, and managerial capabilities to provide intrastate interexchange telecommunications service in a geographic area to be served. Upon

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review of Williams' application, it appears that Williams has sufficient managerial, financial and technical capabilities to provide telecommunications service. Accordingly, we hereby grant Certificate No. 5689 to Williams to provide interexchange telecommunications service.

If this Order becomes final and effective, it will serve as Williams' certificate. It should, therefore, be retained by Williams as proof of certification.

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.

PETITION FOR WAIVER

In addition to filing the application to provide interexchange telecommunications service, Williams filed a petition for waiver of Rule 25-24.490(2), Florida Administrative Code. This rule requires that a company maintain on file with the Commission a bond covering its current balance of deposits if it requires deposits from its customers. A company may apply to the Commission for a waiver of the bond requirement by demonstrating that it possesses the financial resources and income to provide assurance of continued operation under its certificate over the long term. A review of Williams' financial resources demonstrates that the company has \$14 billion in capitalization and financial commitments. Williams has indicated that it will be investing \$35 million in 1998 for the construction or acquisition of its facilities within the state of Florida. Moreover, Williams is a wholly-owned subsidiary of Williams Communications Group, Inc., which is a wholly-owned subsidiary of Williams Holdings of Delaware, Inc. Williams Holding is a publicly traded Fortune 500 company and a profitable company. Accordingly, we find that Williams possesses the financial resources and income to provide assurance of continued operation under its certificate over the long term.

Additionally, Williams has to satisfy the requirements for a waiver under Section 120.542, Florida Statutes. This statute requires an applicant to demonstrate that the purpose of the

underlying statute will be or has been achieved by other means by the person and that the application of the rule would create a substantial hardship or would violate principles of fairness. The underlying statutes pertaining to the rule in this instance are Sections 364.03 and 364.337, Florida Statutes. These statutes require that an applicant submit information demonstrating that it has the financial, managerial, and technical capabilities to provide interexchange telecommunications services. The underlying policy is that an applicant's ability to provide service is questionable in the absence of financial and technical resources. We have found previously that Williams has the financial resources and technical ability to provide long term service to the public.

We also find that Williams has demonstrated that complying with the bond requirement would be a substantial hardship for the company. Hardship is measured on a case by case basis. In this particular case, the hardship is the allocation of funds for a bond and the administrative expenses associated with maintaining the bond. Furthermore, the purpose of the bond requirement is to ensure that customers are protected if an interexchange company requires a deposit as a condition of service. We believe that a posting of a bond is not necessary given Williams' financial resources.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application for certificate to provide interexchange telecommunications service filed by Williams Communications, Inc. d/b/a Vyvx, Inc. is hereby granted, subject to the terms and conditions stated in the body of this Order. It is further

ORDERED that this Order will serve as Williams Communications, Inc. d/b/a Vyvx, Inc.'s certificate, and should be retained by the company as proof of certification. It is further

ORDERED that Williams Communications, Inc. d/b/a Vyvx, Inc.'s Petition for Waiver of Rule 25-24.490(2), Florida Administrative Code, is hereby granted. It is further order


ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective 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,

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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 in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of August, 1998.



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 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 action proposed herein 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,

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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 September 14, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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 this order becomes 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.