

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida
Public Service Commission of
ALEC Certificate No. 4727 issued
to Cypress Telecommunications
Corporation for violation of
Rule 25-4.0161, F.A.C.,
Regulatory Assessment Fees;
Telecommunications Companies.

DOCKET NO. 981949-TX
ORDER NO. PSC-99-1191-PAA-TX
ISSUED: June 9, 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.

NOTICE OF PROPOSED AGENCY ACTION
ORDER CANCELING ALTERNATIVE LOCAL EXCHANGE
TELECOMMUNICATIONS CERTIFICATE INVOLUNTARILY

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.

Cypress Telecommunications Corporation (Cypress) currently
holds Certificate of Public Convenience and Necessity No. 4727,
issued by the Commission on December 11, 1996, authorizing the
provision of Alternative Local Exchange Telecommunications service.
Cypress has not paid the regulatory assessment fees [RAF(s)]
required by Section 364.336, Florida Statutes, and Rule 25-4.0161,
Florida Administrative Code, for the year 1997. Also, accrued
statutory penalties and interest charges for the years 1996 and
1997 have not been paid. Pursuant to Section 364.336, Florida
Statutes, certificate holders must pay a minimum annual RAF of \$50

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if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161 (2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. All entities that apply for certification receive a copy of our rules governing Alternative Local Exchange Telecommunications service. All applicants must attest that these rules have been received and understood by the applicant and an affidavit must be attached to the application in order for the application to be processed.

Pursuant to Section 350.113(4), Florida Statutes, the RAFs forms for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fees is due. Cypress has been given adequate opportunity to pay. The Commission's correspondence regarding the RAFs was signed for and delivered to Cypress on December 15, 1997.

At the March 16, 1999, Agenda Conference, we approved our staff's recommendation to fine the company \$50 for nonpayment of the RAFs. On March 17, 1999, our staff received a letter from the company's General Counsel, Mr. David Wintersgill, requesting the cancellation of the company's certificate.

On April 6, 1999, Order No. PSC-99-0678-FOF-TX was issued, imposing a \$500 fine. The company had until April 27, 1999, to protest the Order and until May 4, 1999, to pay the fine and past due RAFs, along with statutory penalties and interest charges accrued.

Cypress has not complied with Rule 25-24.820(2), Florida Administrative Code, which states:

(2) If a certificated company desires to cancel its certificate, it shall request cancellation from the Commission in writing and shall provide the following with its request. Cancellation of a certificate shall be ordered subject to the holder providing the required information.

(a) A statement of intent and date certain to pay regulatory assessment fee.

(b) A statement of why the certificate is proposed to be cancelled.

(c) A statement as to how customer deposits and final bills will be handled.

(d) Proof of individual customer notice regarding discontinuance of service.

Accordingly, since the company's certificate remains active until it requests a voluntary cancellation pursuant to Rule 25-24.820(2), Florida Administrative Code, or we involuntarily cancel the certificate, Cypress is responsible for the RAFS. As of the date of this vote, Cypress continues to be in violation of our rules for non-payment of RAFS for the years 1997 and 1998, along with accrued statutory penalties for the years 1996, 1997, and 1998.

For the reasons described above, pursuant to Rule 25-24.820(1)(b) and (c), Florida Administrative Code, we deny Cypress's request for voluntary cancellation of Alternative Local Exchange Telecommunications Certificate No. 4727 for failure to comply with the provisions of Rule 25-24.820(2), Florida Administrative Code. However, we find it appropriate to involuntarily cancel Cypress's certificate, effective December 31, 1998, for failure to pay RAFS pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. Since Cypress is no longer in business, there would be no purpose in requiring Cypress to pay a fine. By involuntarily canceling Cypress's certificate, however, we would be able to track this company should it apply for another certificate with us in the future. The cancellation of the certificate and the closing of the Docket in no way diminishes Cypress's obligation to pay applicable delinquent RAFS for the years 1997 and 1998, along with accrued statutory penalties and interest charges for 1996, 1997, and 1998.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we hereby deny Cypress Telecommunications Corporation's request for voluntary cancellation of Alternative Local Exchange Telecommunications Certificate No. 4727. It is further

ORDERED that pursuant to Rule 25-24.820(1)(b) and (c), Florida Administrative Code, we hereby cancel Cypress Telecommunications Corporation's Alternative Local Exchange Telecommunications Certificate No. 4727, effective December 31, 1998, for failure to comply with Rule 25-24.820(2), Florida Administrative Code; Section

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364.336, Florida Statutes; and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that Cypress Telecommunications Corporation remains obligated for all due and owing regulatory assessment fees for the years 1997 and 1998, as well as accrued statutory penalties and interest charges for 1996, 1997, and 1998. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, 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 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 9th day of June, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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.

As identified in the body of this order, our action involuntarily cancelling the alternative local exchange telecommunications 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, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 30, 1999. If such a petition is filed, 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. In the absence of such a petition, this order shall become 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.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely 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.

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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 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 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.