

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCI WorldCom Communications, Inc. for waiver of Rule 25-4.118, F.A.C., Interexchange Carrier Selection, for transfer of customer base of Intermedia Communications, Inc. to MCI WorldCom Communications, Inc.

DOCKET NO. 011400-TI
ORDER NO. PSC-02-0053-PAA-TI
ISSUED: January 7, 2002

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING WAIVER OF RULE 25-4.118, 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 October 29, 2001, this Commission received a petition seeking a waiver of the interexchange carrier selection requirements of Rule 25-4.118, Florida Administrative Code, from MCI WorldCom Communications, Inc. (MCI WorldCom). MCI WorldCom is a certificated interexchange carrier (IXC) operating in Florida. The company informed us that they will be transferring the long distance voice customers of Intermedia Communications, Inc. (Intermedia), holder of Certificate No. 1565.

DOCUMENT NUMBER-DATE
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BACKGROUND

On October 23, 2000, Intermedia and World Com, Inc. (the parent company of MCI WorldCom) filed with us an application for transfer of control from Intermedia to WorldCom, Inc. That transfer was approved in Order No. PSC-00-2435-PAA-TP issued December 19, 2000, and the approval became final with the issuance of Consummating Order No. PSC-01-0105-CO-TP on January 17, 2001. The transfer of control was subsequently consummated on July 1, 2001, when Intermedia became a wholly-owned subsidiary of WorldCom, Inc. As part of this consolidation long distance customers currently served by Intermedia will be transferred to MCI WorldCom. The transfer will take place in two stages. Business customers will be transferred first, followed by residential customers.

MCI WorldCom has informed us that a notification to Intermedia business customers will be accomplished by mailing a letter notifying them of the upcoming transfer to MCI WorldCom at comparable or lower rates, with no switching fees and no interruption of service. The letter will also state that the customers are free to change carriers if they are not satisfied and there will be no termination penalties. MCI WorldCom intends to file tariff revisions with us for any special promotions related to customers affected by this transfer, once approval has been issued.

The Commission has previously granted an identical request by PNG Telecommunications in Docket No. 000364-TI.

RULE WAIVER

Pursuant to Rule 25-4.118(1), Florida Administrative Code, the provider of a customer shall not be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that an IXC shall submit a change request only if one of the following has occurred: (a) The provider has a letter of agency from the customer requesting the change; (b) The provider has received a customer-initiated call for service; or (c) A third party firm has verified the customer's requested change.

The basis for seeking a waiver of Rule 25-4.118(2), Florida Administrative Code, is set forth in Rule 25-24.455(4), Florida Administrative Code, which states as follows:

An interexchange company may petition for a waiver of any provision of this Part. The Commission may grant a waiver to the extent that it determines that it is consistent with the public interest to do so. The Commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission may consider:

- (a) The factors enumerated in Section 364.337(2), Fla. Statutes; [Now found in Section 364.337(4), F.S., 1999.]
- (b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived; and
- (c) Alternative regulatory requirements for the company which may serve the purposes of this Part.

Pursuant to Rule 25-24.490, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, Florida Administrative Code, and applies to IXCs.

We find that in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. The companies have provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. The customers will receive ample notification of the transfer and have the opportunity not to participate. If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their long distance service. Furthermore, this waiver will prevent unnecessary slamming complaints during this transition.

Accordingly, the interexchange carrier selection requirements in Rule 25-4.118, Florida Administrative Code, are hereby waived for MCI WorldCom's purchase of Intermedia's customer accounts. This docket shall be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by this Commission's decision files a protest within 21 days of the issuance of the proposed agency action order.

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Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition by MCI WorldCom Communications, Inc. for waiver of Rule 25-4.118, Florida Administrative Code in order to facilitate the transfer of the customer base of Intermedia Communications, Inc. is hereby granted as set forth in the body of this Order. 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" 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 7th Day of January, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

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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.

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, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 28, 2002.

In the absence of such a petition, 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.