

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., for purchase by Cypress Communications Operating Company, Inc. (holder of IXC Cert. No. 8177) of long distance customer base in shared tenant service locations in Tampa and Miami from Intermedia Communications, Inc. (holder of IXC Cert. No. 1565 and STS Cert. No. 4448), Access Network Services, Inc. (holder of STS Cert. 1669), and MCI WorldCom Communications, Inc. (holder of IXC Cert. No. 1528 and STS Cert. No. 3497); and request for transfer of STS Cert. No. 7449 from Cypress Communications, Inc. d/b/a Cypress Communications of South Florida, Inc. to Cypress Communications Operating Company, Inc.

DOCKET NO. 020649-TP  
ORDER NO. PSC-02-1388-PAA-TP  
ISSUED: October 8, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING TRANSFER OF CUSTOMER BASES AND WAIVER  
OF THE CARRIER SELECTION REQUIREMENTS OF RULE 25-4.118,  
FLORIDA ADMINISTRATIVE CODE; TRANSFER OF AND NAME  
CHANGE ON SHARED TENANT SERVICE CERTIFICATE

DOCUMENT NUMBER-DATE

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FPSC-02-1388-PAA-TP CLERK

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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 July 5, 2002, the Commission received a petition for the waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, for the purchase of the customer base at shared tenant service (STS) locations in the Tampa and Miami areas by Cypress Communications Operating Company, Inc. from Intermedia Communications, Inc., Access Network Services, Inc., and MCI WorldCom Communications, Inc., subsidiaries of WorldCom, Inc. This is part of a larger transaction involving the sale of WorldCom, Inc.'s STS business to Cypress Communications, Inc., the parent company of Cypress Communications Operating Company, Inc.

On July 31, 2002, the Commission received an application that expanded the docket to include the transfer of STS Certificate No. 7449 from Cypress Communications, Inc. d/b/a Cypress Communications of South Florida, Inc. to Cypress Communications Operating Company, Inc., the subsidiary that provides alternative local exchange telecommunications service under Certificate No. 8176 and interexchange telecommunications service under Certificate No. 8177 in Florida.

While there are no outstanding Regulatory Assessment Fees (RAFs) owed by the entities mentioned above, MCI, which is under Chapter 11 bankruptcy, does have an outstanding penalty and interest for the late payment of its 1997 RAF. The Commission is vested with jurisdiction in this matter pursuant to Sections 364.335, 364.337, 364.339, 364.345, and 364.603, Florida Statutes.

TRANSFER OF CUSTOMER BASES AND WAIVER OF THE CARRIER SELECTION REQUIREMENTS OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE

Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code,

provides that a carrier 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;
- (c) A third party firm has verified the customer's requested change.

Rule 24-24.455(4), Florida Administrative Code, reads 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 (4), Fla. Statutes;
- (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 purpose of this Part.

Although Part XII of Chapter 25-24, Florida Administrative Code, Rules Governing Shared Tenant Service Provided By Other Than Local Exchange Telephone Companies, does not incorporate the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, Rule 25-24.575, Florida Administrative Code, requires STS providers to allow access to all locally available IXC companies.

We believe that in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. Cypress Communications Operating

Company, Inc. has attested that it has provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. We have reviewed the notices that will be sent to the customers. The customers will receive ample notification of the transfer and should not experience any interruption of service, rate increase, or switching fees.

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, we believe that granting this waiver will avoid unnecessary slamming complaints during this transition.

Accordingly, we find it appropriate that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance.

#### TRANSFER OF STS CERTIFICATE

Section 25-24.569, Florida Administrative Code, provides that a STS certificate may be transferred as a whole. Cypress Communications Operating Company, Inc. has filed the required application showing it has sufficient technical, financial, and managerial capabilities to provide shared tenant service as required in Section 364.339(2), Florida Statutes.

We find it to be in the public interest to approve the transfer of STS Certificate No. 7449 from the parent company to its subsidiary, Cypress Communications Operating Company, Inc. STS Certificate No. 7449 shall be amended to reflect that Cypress Communications Operating Company, Inc. is the holder.

If this Order becomes final and effective, it shall serve as Cypress Communications Operating Company, Inc.'s certificate. Cypress Communications Operating Company, Inc. should, therefore, retain this Order as proof of certification.

STS providers are subject to Chapter 25-24, Florida Administrative Code, Part XII, Rules Governing Shared Tenant Service Provided by Other Than Local Exchange Telephone Companies. STS providers are also required to comply with all applicable

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provisions of Chapter 364, Florida Statutes, and Rule 25-4.041, Florida Administrative Code.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request for transfer of the customer bases of Intermedia Communications, Inc., Access Network Services, Inc., and MCI WorldCom Communications, Inc., subsidiaries of WorldCom, Inc. to Cypress Communications Operating Company, Inc. and relieve Cypress Communications Operating Company, Inc. in this instance of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, is hereby approved. It is further

ORDERED that the request for transfer of Shared Tenant Service Certificate No. 7449 from Cypress Communications, Inc. d/b/a Cypress Communications of South Florida, Inc. to Cypress Communications Operating Company, Inc., is hereby approved. It is further

ORDERED that Shared Tenant Service Certificate No. 7449 shall be amended to reflect that Cypress Communications Operating Company, Inc., is the holder of this certificate. It is further

ORDERED that Cypress Communications Operating Company, Inc.'s Shared Tenant Service Certificate No. 7449 is subject to the terms and conditions set forth in the body of this Order. It is further

ORDERED that this Order shall serve as Cypress Communications Operating Company, Inc.'s certificate and should be retained by Cypress Communications Operating Company, Inc. as proof of certification and as evidence of the name change. It is further

ORDERED that Cypress Communications, Inc. d/b/a Cypress Communications of South Florida, Inc., and Cypress Communications Operating Company, Inc. shall remit Regulatory Assessment Fees for the year 2002. 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

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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 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 8th day of October, 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 )

AJT

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.

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 October 29, 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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.