

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint application for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., for transfer of retail customer base and related assets of International Exchange Communications, Inc. d/b/a IE Com (holder of IXC Certificate No. 5798) to Matrix Telecom, Inc. (holder of IXC Certificate No. 2495), and request for name change on Certificate No. 2495 to Matrix Telecom, Inc. d/b/a IECOM.

DOCKET NO. 021189-TI
ORDER NO. PSC-03-0122-PAA-TI
ISSUED: January 22, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER WAIVING THE CARRIER SELECTION REQUIREMENTS
OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE
AND GRANTING NAME CHANGE

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.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BACKGROUND

On January 4, 2001, International Exchange Communications, Inc. d/b/a IE Com (IE Com) filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, for the Northern District of California, San Francisco Division (Case No. SF 01-30027DM, *administered in SF 00-33019 DM*).

On November 25, 2002, this Commission received a joint petition from IE Com, holder of Interexchange Telecommunications Service Certificate No. 5798, and Matrix Telecom, Inc. (Matrix), holder of Interexchange Telecommunications Service Certificate No. 2495, requesting a waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, for the transfer of the retail customer base and related assets from IE Com to Matrix. The petition also requested the approval of a name change for Matrix to include the fictitious name, IECOM.

IE Com and Matrix entered into a Settlement Agreement to transfer the retail customer base and related assets in the bankruptcy proceeding. The Settlement Agreement was filed with the Bankruptcy Court on October 21, 2002, and approved by the Bankruptcy Court on December 20, 2002.

While there are no outstanding Regulatory Assessment Fees (RAFs) owed by the entities mentioned above, IE Com, which is under Chapter 11 bankruptcy, does have outstanding penalties and interest for the late payment of its 1999 and 2000 RAFs.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.335, 364.337, and 364.603, Florida Statutes.

DISCUSSION

Pursuant to section 364.603, Florida Statutes, and 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.

The Commission has made this carrier selection rule apply to IXC's by incorporating Rule 25-4.118, Florida Administrative Code, into Rule 25-24.490, Florida Administrative Code.

Florida statutes authorize the Commission some discretion to exempt carriers from some of Chapter 364, Florida Statutes, requirements. Thus, Section 364.337(4), Florida Statutes, provides, in pertinent part:

A certificated intrastate interexchange telecommunications company may petition the commission for a waiver of some or all the requirements of this chapter, except ss. 364.16, 364.335(3), or subsection (5). The commission may grant such petition if determined to be in the public interest.

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 may serve the purpose of this Part.

This Commission finds that in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. Matrix 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. The customers will receive sufficient notification of the transfer and will be given the opportunity to choose another carrier. If prior authorization had been sought from the affected customers in accordance with Rule 25-4.118, Florida Administrative Code, customers may have failed to respond to the request for authorization or neglected to select another carrier, thereby losing their long distance service. Furthermore, granting this waiver will avoid unnecessary slamming complaints during this transition.

Accordingly, we find that the interexchange carrier selection requirements in Rule 25-4.118, Florida Administrative Code, should be waived for IE Com's transfer of its retail customer base to Matrix.

Matrix has also asked that the Commission approve its request for a name change on Interexchange Telecommunications Service Certificate No. 2495 from Matrix Telecom, Inc. to Matrix Telecom, Inc. d/b/a IECOM. Staff has reviewed the Department of State, Division of Corporations' records and it appears that Matrix has properly registered the fictitious name, IECOM.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code be waived to facilitate the transfer of the retail customer base and associated assets from International Exchange Communications, Inc. d/b/a IE Com to Matrix Telecom, Inc. It is further

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ORDERED by the Florida Public Service Commission that Matrix Telecom, Inc.'s request to change the name on Interexchange Telecommunications Service Certificate No. 2495 to Matrix Telecom, Inc. d/b/a IECOM is hereby granted. 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 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 22nd day of January, 2003.

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)

BRT

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 February 12, 2003.

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.