

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for cancellation of AAV/CLEC Certificate No. 3151 by Metropolitan Fiber Systems of Florida, Inc., effective 1/2/04.

DOCKET NO. 031053-TA

In re: Request for cancellation of AAV/CLEC Certificate No. 4040 by MCI WorldCom Communications, Inc., effective 1/2/04.

DOCKET NO. 031054-TA

In re: Request for cancellation of STS Certificate No. 1669 by Access Network Services, Inc., effective 1/2/04.

DOCKET NO. 031055-TS
ORDER NO. PSC-03-1460-PAA-TP
ISSUED: December 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 GRANTING CANCELLATION OF ALTERNATE ACCESS
VENDOR/COMPETITIVE LOCAL EXCHANGE AND SHARED TENANT SERVICE
CERTIFICATES DUE TO CHAPTER 11 BANKRUPTCY

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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The Division of the Commission Clerk and Administrative Services advised our staff that the entities listed below had not paid the 2002 Regulatory Assessment Fees (RAFs). Also, accrued statutory penalties and interest charges for late RAFs payments for the 2002 had not been paid.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF of \$50 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 Alternate Access Vendor/Competitive Local Exchange and Shared Tenant service.

Due to the Plan of Reorganization under title 11 of chapter 11 of the United States Code (the "Bankruptcy Code"), Case No. 02-13533(AJG), having been filed with the Bankruptcy Court by WorldCom, Inc. and approved by said Bankruptcy Court on October 31, 2003, the certificates listed herein have been requested to be cancelled.

Chapter 11 of Section 109 of the Federal Bankruptcy Code provides for reorganization by business entities. The filing of a bankruptcy petition under Chapter 11 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Section 362(b)(5) provides that, for governments, the filing of the petition does not operate as a stay "of the enforcement of a judgment, other than a money judgment, obtained in an actual proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." (emphasis added) Thus, it would appear that we are not enjoined from exercising our police powers to protect public health, safety and welfare, but are enjoined from exercising our regulatory authority seeking to collect a debt. However, in this case, each of the entities has requested cancellation of its respective certificate. Under those circumstances, this Commission is free to do so. We note that the Division of the Commission Clerk and Administrative Services will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write-off the uncollectible amounts should be requested.

Accordingly, we find it appropriate to cancel the certificates listed below, effective on the dates shown. If an entity's certificate is canceled in accordance with this Order, that entity shall immediately cease and desist providing Alternate Access Vendor/Competitive Local Exchange and Shared Tenant services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.335, Florida Statutes.

<u>ENTITY'S NAME</u>	<u>CERTIFICATE TYPE/NO.</u>	<u>EFFECTIVE DATE</u>
MCI WorldCom Communications, Inc.	AAV/CLEC 4040	01/02/04
Access Network Services, Inc.	STS 1669	01/02/04
Metropolitan Fiber Systems of Florida, Inc.	AAV/CLEC 3151	01/02/04

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Alternate Access Vendor/Competitive Local Exchange and Shared Tenant certificates listed herein are hereby canceled, effective on the dates shown above. It is further

ORDERED that the outstanding Regulatory Assessment Fees should not be sent to the Department of Financial Services for collection. The Division of the Commission Clerk and Administrative Services, instead, shall request for permission to write-off the uncollectible amounts. It is further

ORDERED that if an entity's certificate is canceled in accordance with this Order, that entity shall immediately cease and desist providing Alternate Access Vendor/Competitive Local Exchange and Shared Tenant services in Florida. It is further

ORDERED that any protest to the action proposed herein shall specify the entity or entities to which it applies. It is further

ORDERED that, if a protest to this Order is filed, the protest shall not prevent the action proposed herein from becoming final

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with regard to the remaining entities listed in 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 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, these dockets shall be closed.

By ORDER of the Florida Public Service Commission this 22nd day of December, 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)

VSM

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 12, 2004.

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.