



Public Service Commission

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RECORDS AND REPORTING

DATE: JULY 23, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (KENNEDY) *REK*
 DIVISION OF AUDITING AND FINANCIAL ANALYSIS (DRAPER)
 DIVISION OF LEGAL SERVICES (OTTINOT, PENAY) *WMP*

RE: DOCKET NO. 980697-TI - APPLICATION FOR CERTIFICATE TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICE AND PETITION FOR WAIVER OF BOND REQUIREMENT, BY WILLIAMS COMMUNICATIONS, INC. D/B/A VYVX, INC.

AGENDA: 08/04/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: STATUTORY DEADLINE, AUGUST 26, 1998

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\980697.RCM

CASE BACKGROUND

On May 28, 1998, this Commission received an application for certification as an interexchange telecommunications service company and a petition seeking a waiver of Rule 25-24.490(2), Florida Administrative Code, from Williams Communications, Inc. d/b/a Vyvx, Inc., (Williams). The rule requires that a company maintain on file with the Commission a bond covering its current balance of deposits and advance payments from its customers.

The Notice of Petition of Waiver of Bond Requirement was submitted to the Secretary of State for publication in the Florida Administrative Weekly on June 9, 1998. The comment period ended on July 3, 1998 and no comments were submitted. The statutory

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 980697-TI
DATE: July 23, 1998

deadline for the Commission's decision regarding this petition is August 26, 1998.

The Commission has addressed several bond waiver petitions in the past and has approved or denied them based on the financial data provided by the petitioning interexchange telecommunications carrier. As explained below, staff recommends that Williams be granted a certificate to operate as an interexchange telecommunications service provider and be granted the waiver from Rule 25-24.490(2), Florida Administrative Code.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Williams a certificate to provide interexchange telecommunications service within the State of Florida as provided by Section 364.337(3), Florida Statutes?

RECOMMENDATION: Yes. Williams should be granted,

Florida Public Service Commission Certificate No. 5689
(Kennedy)

STAFF ANALYSIS: Section 364.337(3), Florida Statutes reads as follows:

The commission shall grant a certificate of authority to provide intrastate interexchange telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area to be served.

Williams filed an application with the Commission on May 28, 1998, to offer telecommunications service as a facilities based carrier in Florida. The company has sufficient managerial and technical capabilities in the provision of telecommunications service. A review of Williams' financial capability by the Division of Auditing and Financial Analysis indicates that the application appears to meet the requirements of Section 364.337(3), Florida Statutes.

Therefore, staff recommends that the Commission grant Williams a certificate to provide interexchange telecommunications service.

DOCKET NO. 980697-TI
DATE: July 23, 1998

ISSUE 2: Should the Commission grant Williams a waiver of Rule 25-24.490(2), Florida Administrative Code?

RECOMMENDATION: Yes (Ottinot)

STAFF ANALYSIS: Rule 25-24.490(2), Florida Administrative Code, states as follows:

An interexchange company may require a deposit as a condition of service and may collect advance payments for more than one month of service if it maintains on file with the Commission a bond covering its current balance of deposits and advance payments (for more than one month's service). A company may apply to the Commission for a waiver of the bond requirement by demonstrating that it possesses the financial resources and income to provide assurance of continued operation under its certificate over the long term.

Staff believes that the company has demonstrated adequate financial resources and income to assure the longevity of its operations. Williams has nearly \$14 billion in capitalization and financial commitments. The company has also stated that it will be initially investing approximately \$35 million in 1998 for the construction or acquisition of its Florida facilities. Further, Williams Communications, Inc. d/b/a Vyvx, Inc. is a wholly-owned subsidiary of Williams Communications Group, Inc., which in turn is a wholly-owned subsidiary of Williams Holdings of Delaware, Inc. Williams Holdings is a publicly traded Fortune 500 company and is solidly profitable.

In addition to meeting the requirements of Rule 25-24.490(2), Florida Administrative Code, for waiver of the bond requirement, Williams' petition for waiver must also meet the requirements of Chapter 120.542, Florida Statutes. Under this statutory requirement, a petitioner requesting a waiver of a Commission rule must first demonstrate that the purpose of the underlying statute will otherwise be served if waiver of the rule is granted. Secondly, the petitioner must demonstrate that continued enforcement of the rule would result in substantial hardship for the petitioner or violate principles of fairness.

Staff believes that Williams' petition meets the requirements of Chapter 120.542, Florida Statutes. First, the petitioner has demonstrated that the pro-consumer, public interest purposes of Chapter 364.03 and 364.337, Florida Statutes, underlying Rule 25-

DOCKET NO. 980697-TI
DATE: July 23, 1998

24.490(2), Florida Administrative Code, will be served if the Commission grants the waiver request. Williams has demonstrated that a bond is not necessary to protect consumers' interests in this situation because of its substantial financial resources and overall stability.

Secondly, the company has demonstrated that the Commission's enforcement of the bond requirement would result in substantial hardship for the company. Enforcement of the bond requirement would force Williams to tie up thousands of dollars in a bond and incur the cost of administrative expenses associated with maintaining the bond. Given Williams financial stability and size, the posting of a bond is not necessary to protect the public interest. Accordingly, staff recommends that Williams' waiver petition be granted.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected by the Commission's Proposed Agency Action, files a protest within 21 days of the issuance date of the order, this docket should be closed. (K. Pena)

STAFF ANALYSIS: This docket should be closed, if no person whose substantial interests are affected by the Commission's Proposed Agency Action, files a protest within 21 days of the issuance date of the order.