

WIGGINS & VILLACORTA, P.A.

ATTORNEYS AT LAW

2145 DELTA BOULEVARD, SUITE 200
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POST OFFICE DRAWER 1657
TALLAHASSEE, FLORIDA 32302

TELEPHONE (850) 385-6007
FACSIMILE (850) 385-6008
INTERNET: wiggvill@netally.com

DEPOSIT DATE
D019^M OCT 13 1998

October 12, 1998

RECEIVED
REC'D
OCT 12 PM 4:30
REPORTING AND

VIA HAND DELIVERY

Ms. Blanca Bayo
Director of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

ACK _____
AFA _____
APP _____
CAF _____
CMU 1 _____
CTR _____
EAG _____
LEG 1 _____
LIN _____
OPC _____
RCH _____
SEC 1 _____
WAS _____
OTH _____

Re: DOCKET NO.: 961233-TI - Initiation of show cause proceedings against Fox Fiber Optics for violation of Rules 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required, and 25-4.043, Response to Commission Staff Inquiries.

DOCKET NO.: 970650-TI - Application for transfer of Interexchange Telecommunications Certificate No. 2929 from WATS/800, Inc. d/b/a ITS to ITS Billing, Inc. d/b/a ITS d/b/a Fox Fiber Optics.

Dear Ms. Bayo:

Pursuant to Order No. PSC-98-1087-FOF-TI, issued in the above dockets, ITS Billing tenders its check in the amount of \$20,000 payable to the Florida Public Service Commission for deposit in the State of Florida General Revenue Fund. This payment is made for the purpose of settling this matter and is not to be construed as an admission of liability.

THIS MULTI-TONE AREA OF THE DOCUMENT CHANGES COLOR GRADUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS BOTH TOP AND BOTTOM

SUNTRUST Official Check 2102913451

Purchaser **ITS BILLING** Date **Oct. 9, 1998** Initials (type) **MF1250** Center **0468**

PAY ******\$20,000.00****** \$ **20,000.00****

To the order of **FLORIDA PUBLIC SERVICE COMMISSION**

DOCUMENT NUMBER - DATE **11401 OCT 13 98**

Payable at any SunTrust Bank

SunTrust Banks, Inc. by its Authorized Agent
SunTrust Bank, Central Florida, N.A.
Mellie Rivera
Authorized Signature

WIGGINS & VILLACORTA, P.A.

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RECORDS AND
REPORTING

October 12, 1998

VIA HAND DELIVERY

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Florida Public Service Commission
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Tallahassee, Florida 32399-0850

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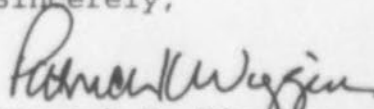
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Sincerely,


Patrick K. Wiggins

Enclosure

Check received with filing and forwarded to Fiscal for deposit. Fiscal to forward a copy of check to RAR with proof of deposit.

Initials of person who forwarded check:

A.J.

POST OFFICE DRAWER 1687
TALLAHASSEE, FLORIDA 32302

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ATTORNEYS AT LAW
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TALLAHASSEE, FLORIDA 32303

TELEPHONE (850) 385-6007
FACSIMILE (850) 385-6008
INTERNET: wiggsvll@netally.com

TELECOPY

DATE : 10-12-98

TO : TOMMY WILLIAMS

413-6589

FROM : PATRICK K. WIGGINS

THIS TELECOPY CONSISTS OF 3 PAGE(S) INCLUDING THIS COVER PAGE.
PLEASE DELIVER AS SOON AS POSSIBLE. IF YOU HAVE ANY QUESTIONS,
PLEASE CALL (850) 385-6007.

WIGGINS & VILLACORTA, P.A.
ATTORNEYS AT LAW

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October 12, 1998

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Director of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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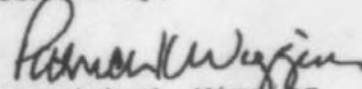
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Sincerely,


Patrick K. Wiggins

Enclosure

SUNTRUST

Official Check

2101913451

Paid to order of

ITS BILLING

Date

04650

046

Check (Type)

Center

PAY

****\$20,000.00****

Oct. 9, 1998

\$ 20,000.00**

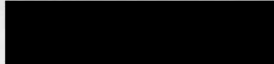
To the Order of

FLORIDA PUBLIC SERVICE COMMISSION

SunTrust Banks, Inc. by an Authorized Agent
SunTrust Bank, Central Florida, N.A.

Mellie Riser

Payable at any Sun Trust Bank



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Fox Fiber Optics for violation of Rules 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required, and 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 961233-TI

In re: Application for transfer of Interexchange Telecommunications Certificate No. 2929 from WATS/800, Inc. d/b/a ITS to ITS Billing, Inc. d/b/a ITS d/b/a Fox Fiber Optics.

DOCKET NO. 970650-TI
ORDER NO. PSC-98-1087-FOF-TI
ISSUED: August 11, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER APPROVING SETTLEMENT OFFER
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING TRANSFER OF INTEREXCHANGE
TELECOMMUNICATIONS CERTIFICATE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein concerning the transfer of the Interexchange Telecommunications certificate is preliminary in nature and will become final unless a person whose substantial interests are affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

By Order No. PSC-97-0511-FOF-TI, issued On May 5, 1997, in Docket No. 961233-TI, the Commission ordered Fox Fiber Optics (Fox) to show cause why it should not be fined \$100,000 for violation of Rule 25-24.470, Florida Administrative Code, and \$25,000 for violation of Rule 25-4.043, Florida Administrative Code. On May 27, 1997, Fox filed its Response to Order No. PSC-97-0511-FOF-TI, in which it denied the violations and requested a hearing pursuant to Section 120.57, Florida Statutes. Accordingly, a hearing was set for November 5, 1997.

On May 27, 1997, WATS/800 advised us that it planned use the registered fictitious names "ITS Billing," "ITS," "Information and Telephone Services," and "Fox Fiber Optics" for various product offerings. Docket No. 970650-TI was opened for purposes of processing this certificate name change. On July 11, 1997, ITS Billing, Inc., filed an Application for Authority to Provide Interexchange Telecommunications Service within the State of Florida, seeking transfer of Certificate No. 2929 from WATS/800, Inc., d/b/a ITS, d/b/a ITS Billing, Inc., d/b/a Information and Telephone Services, and d/b/a Fox Fiber Optics to ITS Billing, Inc., d/b/a ITS Billing, Inc., d/b/a ITS, d/b/a Information and Telephone Services, and d/b/a Fox Fiber Optics (ITS). We restyled Docket No. 970650 to reflect that its purpose was to examine the application to transfer WATS/800's certificate to ITS. ITS submitted the required tariffs on August 8, 1997.

SHOW CAUSE

In response to our Order to Show Cause, Order No. 97-0511-FOF-TP, Fox indicated that it did not believe it had to be certificated, but acknowledged that because the principals and management of Fox and WATS/800 are the same, the need for certification may not be clear. Fox also indicated that it had not responded to our inquiries because the inquiries had not been directed to company management.

On June 6, 1997, Fox submitted a settlement proposal where it stated that (1) it is taking steps to make it clear that service is being provided by WATS/800, Inc., (WATS/800), an interexchange carrier operating in Florida (Certificate No. 2929), under the fictitious name and service mark "Fox Fiber Optics;" (2) Fox and WATS/800 have retained counsel as the primary contact to ensure

timely response to our inquiries; and (3) Fox is prepared to pay \$10,000 in lieu of a fine in settlement of all potential sanctions. Our staff was, however, concerned with certain portions of Fox's proposal. In view of these concerns, the company and our staff had further discussions regarding this matter.

On July 25, 1997, Fox submitted a revised settlement proposal. Therein, it proposed to make a payment in lieu of a fine in the amount of \$20,000. The settlement proposal is attached and incorporated herein as Attachment A. The company emphasized, however, that the transfer of certificate from WATS/800 to ITS is an essential part of the settlement, because WATS/800 has declared bankruptcy, and its assets have been assigned to ITS pursuant to a creditors' agreement approved by the court. The company further stated that ITS will provide telecommunications services as a switchless rebiller upon transfer of Certificate No. 2929.

Upon consideration, we hereby accept the settlement offer proposed by Fox. The \$20,000 payment shall be remitted to the Florida Public Service Commission within five business days from the issuance of this Order. The \$20,000 payment shall be forwarded to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes.

TRANSFER OF CERTIFICATE NO. 2929

On May 27, 1997, WATS/800 and ITS filed a joint request for transfer of Interexchange Telecommunications (IXC) Certificate No. 2929 from WATS/800 to ITS. As noted, the assets of WATS/800 have been assigned to ITS to enable the company to continue operations.

Section 364.337, Florida Statutes, authorizes us to grant a certificate to provide intrastate telecommunications service upon a showing of sufficient technical, financial, and management capability. Section 364.335, Florida Statutes, requires that we act upon applications for certificate and for transfers of certificate in the interest of promoting the competitive provision of telecommunication services, and to apply the same criteria in both cases.

Upon review and consideration of its application, we find that ITS has sufficient financial capability to satisfy the requirements of Section 364.337, Florida Statutes, although ITS provided an

income statement for the period February 7, 1997, to May 31, 1997, reflecting a net loss of \$568,306 on revenues of \$1,337,321, which caused some concerns initially. ITS explained, however, that its losses were largely attributable to high start-up costs incurred in launching a sweepstakes marketing campaign, which included extensive measures designed to avoid unauthorized Primary Interexchange Carrier (PIC) changes. ITS abandoned the campaign after only a few months when it failed to realize the revenues anticipated from it. ITS stated that it believed it was currently operating profitably. Nevertheless, the company added that if we do not approve the transfer of WATS/800's certificate, the company will be placed in severe financial distress.

In subsequent correspondence, ITS indicated that it has been able to reduce expenses, build its customer base, and achieve current profitability since October 1997. It has provided us with summaries of cash receipts and disbursements showing cash flow of \$10,187 on receipts of \$280,872 for March 1998 and \$59,384 on receipts of \$279,032 for April 1998. ITS also provided us with an income statement for the period February 7, 1997, to December 31, 1997, showing a net loss of \$1,089,419 on operating revenues of \$3,369,580. It also included a balance sheet showing assets of \$1,052,882 and shareholders' equity of \$553,750. In addition, ITS asserts that it has provided telecommunications services over the past year to the present without any significant complaints, in spite of its financial problems. Thus, ITS asserts that it has satisfied the criteria of Section 364.337(3), Florida Statutes.

While we have some reservations concerning the financial capability of ITS, we are persuaded by the company's current performance that it is resolving its financial problems. While still substantial, ITS's operating losses in the last six months of 1997 amounted to a lesser percentage of revenues than in the preceding four months. Its current operations reflect positive cash flows. Thus, we believe that ITS has demonstrated sufficient financial capability as required by Section 364.337(3), Florida Statutes. In addition, ITS has provided services since February 1997 to an apparently increasing number of customers without any quality problems of which staff is aware. For these reasons, we find that ITS has demonstrated sufficient technical, financial, and management capability to provide telecommunications services in Florida. We find the transfer is in the public interest, and, hereby, approve the transfer of Certificate No. 2929 from WATS/800 to ITS. IXC Certificate No. 2929 shall be amended to reflect that ITS is the holder of this certificate.

If this Order becomes final and effective, it shall serve as ITS' certificate. ITS shall, therefore, retain this Order as proof of certification. We emphasize that IXCs are subject to Chapter 25-24, Florida Administrative Code, Part X, Rules Governing Telephone Service Provided by Interexchange Telephone Companies. IXCs are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapters 25-4, Florida Administrative Code. Further, pursuant to the provisions of Order No. 16804, issued November 4, 1986, IXCs may not construct facilities to bypass a local exchange company without the prior approval of this Commission.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that settlement offer proposed by Fox Fiber Optics, attached and incorporated in this Order as Attachment A, is hereby approved. It is further

ORDERED that Fox Fiber Optics shall remit the \$20,000 payment in settlement to the Florida Public Service Commission within five business days from the issuance of this Order. The \$20,000 payment shall be forwarded to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that upon remittance of the \$20,000 payment, Docket No. 961233-TI shall be closed.

ORDERED that the request for transfer of Interexchange Telecommunications Certificate No. 2929 from WATS/800, Inc. d/b/a ITS to ITS Billing, Inc. d/b/a ITS d/b/a Fox Fiber Optics, is hereby approved. It is further

ORDERED that Interexchange Telecommunications Certificate No. 2929 shall be amended to reflect that ITS Billing, Inc. d/b/a ITS d/b/a Fox Fiber Optics, is the holder of this certificate.

ORDERED that ITS Billing, Inc. d/b/a ITS d/b/a Fox Fiber Optics Interexchange Telecommunications service Certificate No. 2929 is subject to the terms and conditions set forth in the body of this Order. It is further

ORDER NO. PSC-98-1087-FOF-TI
DOCKET NOS. 961233-TI and 970650-TI
PAGE 6

ORDERED that this Order will serve as ITS Billing, Inc. d/b/a ITS d/b/a Fox Fiber Optics's certificate and that this Order shall be retained as proof of certification. It is further

ORDERED that the provisions of this Order, concerning the transfer of the Interexchange Telecommunications Certificate No. 2929 are issued as proposed agency action, and shall become final and effective 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 or Judicial Review" attached hereto. It is further

ORDERED that in the event the portions of this Order pertaining to the transfer of Certificate No. 2929 become final, Docket 970650-TI shall be closed. It is further

By ORDER of the Florida Public Service Commission this 11th day of August, 1998.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

SOME (OR ALL) ATTACHMENT PAGES ARE NOT ON ELECTRONIC DOCUMENT.

BK/KMP

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action approving the settlement offer proposed by Fox Fiber Optics may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

The transfer of Interexchange Telecommunications Certificate No. 2929 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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 1, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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.

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.

ORDER NO. PSC-98-1087-FOF-TI
DOCKET NOS. 961233-TI and 970650-TI
PAGE 8

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.