

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: SEPTEMBER 19, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (PRUITT) *YD*
OFFICE OF THE GENERAL COUNSEL (TEITZMAN) *AT PR*

RE: DOCKET NO. 020649-TP - 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.

AGENDA: 10/01/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020649.RCM

CASE BACKGROUND

On July 5, 2002, this 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. (Cypress) from Intermedia Communications, Inc., Access Network Services

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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.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of the long distance customers in shared tenant service locations in Tampa and Miami from Intermedia Communications, Inc., Access Network Services, Inc., and MCI WorldCom Communications, Inc. to Cypress Communications Operating Company, Inc.?

RECOMMENDATION: Yes. (Pruitt)

STAFF ANALYSIS: 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.

Pursuant to Rule 25-24.490, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

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.

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.

Staff believes 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 has attested that it has provided for a seamless transition while ensuring that the

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affected customers understand available choices with the least amount of disruption to the customers. Staff has 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.

Staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition. Therefore, staff recommends that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance.

ISSUE 2: Should the Commission approve the 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.?

RECOMMENDATION: Yes. (Pruitt)

STAFF ANALYSIS: Section 25-24.569, Florida Administrative Code, provides that a STS certificate may be transferred as a whole. Cypress 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.

Staff believes it is 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.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (TEITZMAN)

STAFF ANALYSIS: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.