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MEMORANDUM

99 MAR 26 AM 11:11

March 26, 1999

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PEÑA) *VMP/mrb*

RE: DOCKET NO. 990084-TI - JOINT APPLICATION FOR APPROVAL OF ACQUISITION OF ASSETS OF WAXS, INC. AND CHERRY COMMUNICATIONS, INC. (HOLDER OF IXC CERTIFICATE NO. 3134) BY MAXXIS GROUP, INC., ASSIGNMENT OF CERTIFICATE NO. 3134 TO MAXXIS COMMUNICATIONS, INC., A SUBSIDIARY OF MAXXIS GROUP, INC., AND NAME CHANGE ON CERTIFICATE NO. 3134 TO MAXXIS COMMUNICATIONS, INC.

99-0549 FOF

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING ACQUISITION OF ASSETS, to be issued in the above-referenced docket. (Number of pages in order - 5)

KMP/anr
Attachment
cc: Division of Communications
I: 990084.kmp

See 2.3

3mail

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint application for approval of acquisition of assets of WAXS, Inc. and Cherry Communications, Inc. (holder of IXC Certificate No. 3134) by Maxxis Group, Inc., assignment of Certificate No. 3134 to Maxxis Communications, Inc., a subsidiary of Maxxis Group, Inc., and name change on Certificate No. 3134 to Maxxis Communications, Inc.

DOCKET NO. 990084-TI
ORDER NO. PSC-99-0549-FOF-TI
ISSUED: March 26, 1999

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING ACQUISITION OF ASSETS

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.

Section 364.33, Florida Statutes, provides that a person may not acquire ownership or control of any telecommunications facility, or any extension thereof for the purpose of providing telecommunications services to the public, including the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership, without prior approval from this Commission.

DOCUMENT NUMBER - DATE

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REG. FILED FOR REPORTING

ORDER NO. PSC-99-0549-FOF-TI
DOCKET NO. 990084-TI
PAGE 2

By letter dated January 19, 1999, WAXS, Inc. (WAXS), Cherry Communications, Inc. (Cherry), and Maxxis Group, Inc. (Maxxis) filed with this Commission a joint application for approval of acquisition of assets of WAXS and Cherry by Maxxis. The companies further requested the assignment of and name change on Cherry's Interexchange Telecommunications Certificate No. 3134 to Maxxis Communications, Inc. (Maxxis Communications), a subsidiary of Maxxis.

In accordance with our authority under Section 364.33, Florida Statutes, to approve the acquisition or transfer of majority organizational control or controlling stock ownership of a telecommunications company providing service in Florida, we have reviewed the Petition of WAXS, Cherry, and Maxxis, and find it appropriate to approve it. We have based our review and decision upon an analysis of the public's interest in efficient, reliable telecommunications service. Our decision does not address the potential impact of the transfer on the competitive market in Florida, or on the companies' or their competitors' interests. We emphasize, however, that our approval of the Petition pursuant to our authority under Section 364.33, Florida Statutes, does not preclude us from addressing any of our concerns that may arise regarding this transaction to the appropriate federal or state agencies.

Cherry and Maxxis Communications have complied with Rule 25-24.473, Florida Administrative Code, regarding the assignment of IXC certificates. We find the assignment to be in the public interest and, therefore, approve the assignment. IXC Certificate No. 3134 shall be amended to reflect that Maxxis Communications is the holder of this certificate.

If this Order becomes final and effective, it shall serve as Maxxis Communications' certificate. It should, therefore, be retained by Maxxis Communications as proof of certification and as evidence of the name change.

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,

ORDER NO. PSC-99-0549-FOF-TI
DOCKET NO. 990084-TI
PAGE 3

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 WAXS, Inc., Cherry Communications, Inc., and Maxxis Group, Inc.'s request for approval of acquisition of assets of WAXS, Inc. and Cherry Communications, Inc. by Maxxis Group, Inc. is hereby approved. It is further

ORDERED that the request for assignment of and name change on Interexchange Telecommunications Certificate No. 3134 from Cherry Communications, Inc. to Maxxis Communications, Inc., is hereby approved. It is further

ORDERED that Interexchange Telecommunications Certificate No. 3134 shall be amended to reflect that Maxxis Communications, Inc., is the holder of this certificate.

ORDERED that Maxxis Communications, Inc.'s Interexchange Telecommunications service Certificate No. 3134 is subject to the terms and conditions set forth in the body of this Order. It is further

ORDERED that this Order will serve as Maxxis Communications, Inc.'s certificate and that this Order should be retained as proof of certification and as evidence of the name change. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, 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 this Order becomes final, this Docket shall be closed.

ORDER NO. PSC-99-0549-FOF-TI
DOCKET NO. 990084-TI
PAGE 4

By ORDER of the Florida Public Service Commission, this 26th
day of March, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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.

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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 16, 1999.

ORDER NO. PSC-99-0549-FOF-TI
DOCKET NO. 990084-TI
PAGE 5

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.

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.