

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., for transfer of portion of long distance customer base and accounts receivable from Lightyear Communications, Inc. (holder of IXC Certificate No. 3500) and Lightyear Telecommunications LLC (holder of IXC Certificate No. 3960) to A.R.C. Networks, Inc. d/b/a InfoHighway (holder of IXC Certificate No. 4702).

DOCKET NO. 021052-TI
ORDER NO. PSC-02-1622-PAA-TI
ISSUED: November 25, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING REQUEST BY A.R.C. NETWORKS, INC. D/B/A
INFOHIGHWAY, LIGHTYEAR TELECOMMUNICATIONS INC., AND LIGHTYEAR
TELECOMMUNICATIONS LLC FOR WAIVER OF THE CARRIER SELECTION
REQUIREMENTS IN RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE

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

12888 NOV 25 02

FPSC-COMMISSION CLERK

CASE BACKGROUND

On October 15, 2002, we received a petition from A.R.C. Networks, Inc. d/b/a InfoHighway (A.R.C.), Lightyear Communications, Inc., and Lightyear Telecommunications LLC (collectively Lightyear) requesting a waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, for the transfer of certain long distance customers from Lightyear to A.R.C.

Lightyear is currently under Chapter 11 bankruptcy protection and on August 23, 2002, this transfer of customers and accounts receivable to A.R.C. was approved by the United States Bankruptcy Court for the Western District of Kentucky.

There are no outstanding Regulatory Assessment Fees (RAFs) owed by A.R.C. Lightyear, which is under Chapter 11 bankruptcy, does have outstanding penalties and interest for the late payment of its 1998 and 2001 RAFs, and still owes a portion of the 1998 RAF. We are vested with jurisdiction in this matter pursuant to Sections 364.337 and 364.603, Florida Statutes.

DISCUSSION

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 IXC's.

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.

This transfer involves only Lightyear customers in areas in which Verizon Florida Inc. is the incumbent local exchange carrier. A.R.C. has attested that it has provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Staff has reviewed the notice that was sent on September 27, 2002, to the Lightyear customers. The customers should not experience any interruption of service, rate increase, or switching fees.

In this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their long distance service. Furthermore, granting this waiver will avoid unnecessary slamming complaints during this transition.

Upon consideration, we find it appropriate in this instance to waive the carrier selection requirements in Rule 25-4.118, Florida Administrative Code.

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DECISION

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the petition from A.R.C. Networks, Inc. d/b/a InfoHighway (A.R.C.), Lightyear Communications, Inc., and Lightyear Telecommunications LLC (collectively Lightyear) requesting a waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, for the transfer of certain long distance customers from Lightyear to A.R.C, is granted. It is further

ORDERED that 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 shall be closed upon the issuance of a consummating order.

By ORDER of the Florida Public Service Commission this 25th Day of November, 2002.

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)

WDK

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 December 16, 2002.

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.