

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to transfer of certain assets of Future Telecom, Inc. to A.R.C. Networks, Inc. d/b/a InfoHighway Communications.

DOCKET NO. 060115-TI  
ORDER NO. PSC-06-0347-PAA-TI  
ISSUED: April 24, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING RULE WAIVER OF 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.

**I. Case Background**

On February 3, 2006, A.R.C. Networks, Inc. d/b/a InfoHighway Communications (InfoHighway) and Future Telecom, Inc. (FTI), both intrastate interexchange companies (IXCs), submitted a joint request to us for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. The purpose of filing for the waiver is so FTI can transfer certain assets, including its customer accounts and account receivables, to InfoHighway without InfoHighway having to obtain each customer's authorization.

This waiver is being sought to provide notice of the transfer of assets for the treatment of customers in a consumer-friendly manner and allows for a transition to occur in a smooth process protecting both the consumer and the company. Without this waiver, InfoHighway would be required to obtain signed letters of agency (LOAs) or third party verifications (TPVs) from each customer being transferred. With the waiver, InfoHighway can protect itself from possible complaints of unauthorized carrier changes. This waiver is also beneficial to the customers as they will not be subject to a loss of service on the date of transfer.

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FPSC-COMMISSION CLERK

We have jurisdiction in this matter pursuant to Sections 364.02, 364.336, and 364.603, Florida Statutes.

**II. 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 (LOA) . . . from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service . . . ;
- (c) A firm that is independent and unaffiliated with the provider . . . has verified the customer's requested change . . .

Pursuant to Rule 25-24.475(3), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(2), Florida Administrative Code, states:

An IXC may petition for a waiver of any provision of this Part. The waiver shall be granted in whole, granted in Part or denied based on the following:

- (a) The factors enumerated in Section 364.337(4), Florida 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;
- (c) Alternative regulatory requirements for the company which may serve the purposes of this part; and
- (d) Whether the waiver is in the public interest.

The authority for Rule 25-4.118, Florida Administrative Code, is found in Section 364.603, Florida Statutes, which is a section this Commission is authorized to waive.

InfoHighway has attested that it will provide for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Our staff has reviewed the notice that will be sent to FTI's customers and found it to be adequate. The customers shall not experience any interruption of service, rate increase, or switching fees.

Neither FTI nor InfoHighway has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration. Further, there are no active customer complaints on file with this Commission for either company.

**III. Decision**

We find, that in this instance, it is appropriate 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 services. Furthermore, we find that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, we approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Future Telecom, Inc.'s customers to A.R.C. Networks, Inc. d/b/a InfoHighway Communications.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Future Telecom, Inc.'s customers to A.R.C. Networks, Inc. d/b/a InfoHighway Communications is hereby approved. It is further

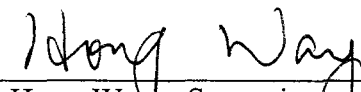
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of April, 2006.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By:

  
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Hong Wang, Supervisor  
Case Management Review Section

( S E A L )

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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 May 15, 2006.

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.