

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to migration of customers of Florida Phone Service Inc. d/b/a Global Telecom Group, holder of CLEC Certificate No. 8630, to FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA, holder of CLEC Certificate No. 5315; and for name change on Certificate No. 5315 to FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA d/b/a Global Telecom.

DOCKET NO. 060794-TX
ORDER NO. PSC-07-0208-PAA-TX
ISSUED: March 6, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING TRANSFER OF AND NAME CHANGE
ON CLEC CERTIFICATE AND GRANTING WAIVER OF
CARRIER SELECTION REQUIREMENTS OF RULE 25-4.118, F.A.C.

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 September 29, 2006, FPS filed for Chapter 11 Bankruptcy, Case No. 06-14905-RAM, with the United States Bankruptcy Court, Southern District of Florida. As a result of its financial condition, FPS will not be able to continue offering telecommunications services in Florida. FPS and FLATEL entered into an agreement whereby FPS' customer base would be transferred to FLATEL. FLATEL seeks the rule waiver so that it will not have to obtain each customer's authorization. With the waiver, FLATEL can protect itself from possible complaints of unauthorized carrier changes (slamming). Customers will benefit because they will not be subject to a loss of service during the transfer.

DOCUMENT NUMBER-DATE:

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FPSC-COMMISSION CLERK

This Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, and 364.603, Florida Statutes. Accordingly, our Staff believes the following recommendations are appropriate.

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 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to CLECs.

Section 364.337(2), Florida Statutes, states in pertinent part:

A certificated competitive local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be 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.

Our Staff reviewed the notice that was sent to FPS customers and found it to be adequate. FLATEL has already acquired FPS' customers and attested that the transition was seamless, without disruption to the customers. FLATEL reports that the customers did not experience any rate increase or switching fees.

FLATEL has no outstanding regulatory assessment fees, penalties, or interest associated with its CLEC certificate. Nor does the company have any active customer complaints on file with this Commission.

FPS does have an outstanding debt with this Commission in Docket No. 060033-TX, In Re: Application for certificate to provide competitive local exchange telecommunications service by Florida Phone Service, Inc. d/b/a Global Telecom Group. In this docket, FPS sought to obtain a third CLEC certificate after its second had been canceled in Docket No. 050622-TX, In Re: Compliance investigation of Florida Phone Service, Inc., CLEC Certificate No. 7936, for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications

Companies, for its apparent failure to pay its regulatory assessment fees. Additionally, the company apparently had been operating without a certificate in the interim. FPS offered to remit a monetary contribution of \$5,500 to this Commission to settle these issues. This Commission accepted the company's proposal. However, of that amount, \$1,666.66 remains unpaid. The United States Bankruptcy Court, Southern District of Florida, will ultimately determine the distribution of the company's assets.

Our 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. If prior authorization had been required in this event, and based upon FPS' financial condition, customers would have been disconnected.

Therefore, our Staff recommends that this Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Florida Phone Service Inc. d/b/a Global Telecom Group's customers to FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA.

III. Conclusion

This Order shall become final and effective upon the issuance of a consummating order, unless persons whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Florida Phone Service Inc. d/b/a Global Telecom Group's customers to FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA is hereby approved. It is further


ORDERED that CLEC Certificate No. 5315 shall be amended to reflect that FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA d/b/a Global Telecom is the holder of that Certificate. 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 6th day of March, 2007.

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

By: 
Ann Cole, Chief
Bureau of Records

(S E A L)

VSM

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 March 27, 2007.

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.