

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to allow transfer of certain local and long distance service customers from Navigator Telecommunications, LLC to Access Integrated Networks, Inc. d/b/a Birch Communications.

DOCKET NO. 080521-TP
ORDER NO. PSC-08-0649-PAA-TP
ISSUED: October 6, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING NAVIGATOR TELECOMMUNICATIONS, LLC AND ACCESS
INTEGRATED NETWORKS, INC. D/B/A BIRCH COMMUNICATIONS' JOINT PETITION
FOR WAIVER OF CARRIER SELECTION REQUIREMENTS AND TRANSFER OF
CUSTOMERS

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 August 4, 2008, Navigator Telecommunications, LLC (Navigator) and Access Integrated Networks, Inc. d/b/a Birch Communications (Birch), both competitive local exchange telecommunications companies (CLECs) and intrastate interexchange companies (IXCs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, and for the transfer of certain customers from Navigator to Birch. Upon grant of this request, Navigator will continue to service its remaining customers and will, therefore, retain its CLEC certificate and IXC registration.

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Birch is acquiring approximately 43 business customers and 41 residential customers currently served by Navigator. Birch seeks the waiver so it will not have to obtain each customer's authorization. With the waiver, Birch can protect itself from possible complaints of unauthorized carrier changes. Customers will benefit because they will not be subject to a loss of service during the transfer.

We are vested with jurisdiction in this matter pursuant to Sections 364.02, 364.335, 364.336, 364.337, 364.345, 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.

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.

Birch 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 Navigator's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Birch has one outstanding complaint as of the filing date of this recommendation, and Navigator has no outstanding complaints. After the transaction is consummated, Birch agreed to take the lead in working with Navigator to resolve any customer complaints that arise from issues occurring prior to the transfer. Further, neither Birch nor Navigator has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration or CLEC certification.

We find it 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 local and long distance services. Furthermore, granting this waiver will avoid unnecessary slamming complaints during this transition.

III. Decision

Therefore, we find it appropriate to approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. Any waiver approved by this Commission should only apply to the specific set of customers identified in the petition. The petitioners should be required to provide this Commission notification of the actual date when the transaction is consummated. If for any reason the transaction is not consummated, any waiver approved by the Commission shall be null and void.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request for waiver of the carrier selection requirements of Rule 25-4.1 18, in the transfer of certain Navigator Telecommunications, LLC's local and long distance customers to Access Integrated Networks, Inc. d/b/a Birch Communications be granted. It is further

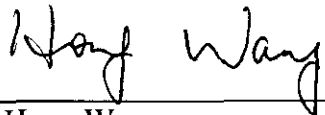
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by

the Office of Commission Clerk, 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 October, 2008.

ANN COLE
Commission Clerk

By: 

Hong Wang
Office of Commission Clerk

(SEAL)

TJB

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 27, 2008.

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.