

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., in transfer of long distance customers from EliteView, LLC d/b/a GroveLine to BCN Telecom, Inc.

DOCKET NO. 080546-TI
ORDER NO. PSC-08-0689-PAA-TI
ISSUED: October 20, 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 ELITEVIEW, LLC D/B/A GROVELINE AND BCN TELECOM INC.'S
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 15, 2008, EliteView LLC d/b/a GroveLine (EliteView) and BCN Telecom, Inc. (BCN), both intrastate interexchange companies (IXCs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, for the transfer of long distance customers from EliteView to BCN. At the conclusion of the transaction, EliteView will retain its IXC registration.

BCN is acquiring approximately 35 business customers and 3 residential customers currently served by EliteView. BCN seeks the waiver so it will not have to obtain each customer's authorization. With the waiver, BCN 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.

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We are vested with jurisdiction in this matter pursuant to Sections 364.02 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, provides that an IXC may petition for a waiver of any provision of the rules governing IXCs. The waiver shall be granted in whole, granted in part, or denied based on the following:

- The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived;
- Alternative regulatory requirements for the company which may serve the purposes of this part; and
- The extent to which a waiver would serve 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.

BCN 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 reviewed the notice that will be sent to EliteView's customers and finds it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Neither BCN nor EliteView has any outstanding complaints. After the transaction is consummated, EliteView will resolve any customer complaints that arise from issues occurring prior to the transfer. BCN will resolve any customer complaints that occur after the transfer.

Further, neither BCN nor EliteView has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration.

We find that requiring BCN to obtain each customer's prior authorization in this event may cause the customers to lose their long distance services should they fail to respond to a request for authorization or neglect to select another carrier. Furthermore, we believe that 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, permitting the transfer of long distance customers from EliteView to BCN. 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 this 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 25-4.118, Florida Administrative Code, in the transfer of EliteView LLC d/b/a GroveLine's long distance customers to BCN Telecom, 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 20th day of October, 2008.



ANN COLE
Commission Clerk

(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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 10, 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.