

State of Florida



Public Service Commission
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COMMISSION CLERK

DATE: OCTOBER 24, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (PRUITT) & OFFICE OF THE GENERAL COUNSEL (KNIGHT) *LOOK ALK*

RE: DOCKET NO. 021052-TI- 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).

AGENDA: 11/05/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\021052.RCM

CASE BACKGROUND

On October 15, 2002, this Commission 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

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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. The Commission is vested with jurisdiction in this matter pursuant to Sections 364.337 and 364.603, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of certain long distance customers from Lightyear Communications, Inc. and Lightyear Telecommunications LLC to A.R.C. Networks, Inc. d/b/a InfoHighway?

RECOMMENDATION: Yes. (Pruitt)

STAFF 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 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 IXCs.

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.

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 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, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, staff recommends that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: 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 should be closed upon the issuance of a consummating order. (Knight)

STAFF ANALYSIS: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.