



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: FEBRUARY 6, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (FRUIT)
OFFICE OF THE GENERAL COUNSEL (FORDHAM) *c.f.f. BK*

RE: DOCKET NO. 030080-TP - PETITION FOR EXPEDITED WAIVER OF
CARRIER SELECTION REQUIREMENTS OF RULE 25-4.118, F.A.C.,
FOR TRANSFER OF CUSTOMER BASE OF MPOWER COMMUNICATIONS
CORP. (HOLDER OF IXC CERTIFICATE NO. 5752 AND ALEC
CERTIFICATE NO. 5279) TO FLORIDA DIGITAL NETWORK, INC.
(HOLDER OF IXC CERTIFICATE NO. 7048 AND ALEC CERTIFICATE
NO. 5715).

AGENDA: 02/18/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030080.RCM

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CASE BACKGROUND

On January 24, 2003, this Commission received a petition from Florida Digital Network, Inc. (FDN), holder of Interexchange Telecommunications Service Certificate No. 7048 and Alternative Local Exchange Certificate No. 5715, requesting a waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, for the transfer of local and long distance customers from Mpower Communications Corp. (Mpower), holder of Interexchange Telecommunications Service Certificate No. 5752 and Alternative Local Exchange Certificate No. 5279.

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On January 30, 2003, the Commission received a letter clarifying the petition, including a copy of a joint letter to the Mpower customers and a Notice of Transfer of Telephone Service.

There are no outstanding Regulatory Assessment Fees owed by the entities mentioned above. The Commission is vested with jurisdiction in this matter pursuant to Sections 364.335, 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 local and long distance customers from Mpower Communications Corp. to Florida Digital Network, Inc.?

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 Rules 25-24.490 and 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs and ALECs, respectively.

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.

Furthermore, Section 364.337(2), Florida Statutes, reads in part:

A certificated alternative 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.

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. FDN 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 will be sent to the customers. The customers will receive ample notification of the transfer and should not experience any interruption of service, rate increase, or switching fees.

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

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

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. (Fordham)

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.