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Public Service Commission

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

DATE: September 9, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Williams) *KS*
Office of the General Counsel (Scott) *AIC*

RE: Docket No. 040808-TI – Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to purchase of substantially all telecommunications assets of Motion Telecom, Inc. by Network US, Inc. d/b/a CA Affinity.

AGENDA: 09/21/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040808.RCM.DOC

Case Background

On August 2, 2004, this Commission received a joint petition from Nowalsky, Bronston & Gothard, on behalf of their clients, Network US, Inc. d/b/a CA Affinity and Motion Telecom, Inc., requesting approval for the waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, due to the purchase of Motion Telecom, Inc.'s customer base and related assets by Network US, Inc. d/b/a CA Affinity.

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

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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 long distance customers from Motion Telecom, Inc. to Network US, Inc. d/b/a CA Affinity?

RECOMMENDATION: Yes. (Williams)

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 (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 25-24.490, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(4), Florida Administrative Code, states in part:

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) . . .
- (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.

Network US, Inc. d/b/a CA Affinity 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. Staff has reviewed the notice that will be sent to Motion Telecom, Inc.'s customers and found it to be adequate. 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

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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.

Further, Motion Telecom, Inc. and Network US, Inc. d/b/a CA Affinity do not have any outstanding regulatory assessment fees, penalties or interest.

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. (Scott)

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.