

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 18, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (M. Watts) *MW*
Office of the General Counsel (Brooks) *BT*

RE: Docket No. 090528-TI – Joint petition for approval to acquire assets, request for expedited approval, and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to allow transfer of a portion of the customer base of Total Call International, Inc. to OPEX Communications, Inc.

AGENDA: 03/02/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RAD\WP\090528.RCM.DOC

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Case Background

On December 4, 2009, Total Call International, Inc. (TCI) and OPEX Communications, Inc. (OPEX), both intrastate interexchange companies (IXC), submitted a request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code (F.A.C.), for the transfer of all presubscribed long distance customers from TCI to OPEX. At the conclusion of the transaction, TCI will retain its IXC registration.

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OPEX is acquiring approximately 200 business customers and 3,778 residential customers currently served by TCI. OPEX seeks the waiver so it will not have to obtain each customer's authorization. With the waiver, OPEX 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.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02(14)(g) and 364.603, Florida Statutes (F.S.). Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C., in the transfer of long distance customers to OPEX Communications, Inc. from Total Call International, Inc.?

Recommendation: Yes, the Commission should approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. Any waiver approved by the Commission should only apply to the specific set of customers identified in the petition. The petitioners should be required to provide the 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. **(M. Watts/Brooks)**

Staff Analysis: Pursuant to Rule 25-4.118(1), F.A.C., a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), F.A.C., provides in pertinent part 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), F.A.C., Rule 25-4.118, F.A.C., is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(2), F.A.C., provides that an IXC may petition for a waiver of any provision of the rules governing IXCs. The Commission can grant in whole, grant in part, or deny the petition for waiver 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.

OPEX 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 notices that will be sent to TCI's customers and found them to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

As of the filing date of this recommendation, neither OPEX nor TCI has any outstanding complaints. After the transaction is consummated, TCI will continue to work with staff to resolve any customer complaints that arise from issues occurring prior to the transfer.

Further, neither OPEX nor TCI has any outstanding regulatory assessment fees, penalties or interest associated with its respective IXC registration.

Staff believes that in this instance it is appropriate to waive the carrier selection requirements of Rule 25-4.118, F.A.C. 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 services. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, staff recommends that the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. Any waiver approved by the Commission should only apply to the specific set of customers identified in the petition. The petitioners should be required to provide the 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.

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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. (Brooks)

Staff Analysis: 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.