

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: April 22, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (Lowery, M. Watts)
Office of the General Counsel (Brooks)

Handwritten signatures and initials in blue ink, including 'M. Watts' and 'Brooks'.

RE: Docket No. 100174-TP – Request of Matrix Telecom, Inc. for waiver of Rule 25-4.118, FAC, Local, Local Toll or Toll Provider Selection regarding a transaction where Matrix will acquire substantially all of the assets and customers of Comtel Telecom Assets LP, and request for cancellation of Comtel Telecom Assets LP's CLEC Certificates No. 5687, 4695, 4699 and IXC Registration Nos. TK025, TK028, and TK029.

AGENDA: 05/04/10 – 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\100174.RCM.DOC

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Case Background

On April 7, 2010, Matrix Telecom, Inc. (Matrix), a competitive local exchange telecommunications company (CLEC) and intrastate interexchange company (IXC), submitted a request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida

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Administrative Code (F.A.C.), for the transfer of all local and long distance customers from four Comtel Telecom Assets LP companies¹ (collectively, "Comtel") to Matrix.

Matrix is acquiring approximately 6,300 business and residential customers currently served by Comtel. Matrix seeks the waiver so it will not have to obtain each customer's authorization. With the waiver, Matrix 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.

This recommendation addresses only the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C., for the transfer of customers from Comtel to Matrix. In the petition, the Comtel companies also requested that their CLEC certificates and IXC registrations be canceled upon completion of the transaction. Upon notification from the companies that the transaction is consummated, staff will file a recommendation to cancel the CLEC certificates and will administratively cancel the IXC registrations. The Comtel companies are responsible for paying the 2010 regulatory assessment fees at the time of cancellation.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.335, 364.336, 364.337, 364.345, and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

¹ **Comtel Telecom Assets LP d/b/a Excel Telecommunications**, holder of CLEC certificate no. 4695 and IXC registration no. TK028;

Comtel Telecom Assets LP d/b/a VarTec Solutions, holder of CLEC certificate no. 4699 and IXC registration no. TK029;

Comtel Telecom Assets LP d/b/a VarTec Telecom, holder of CLEC certificate no. 5687; and

Comtel Telecom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, holder of IXC registration no. TK025.

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 local and long distance customers to Matrix Telecom, Inc. from Comtel Telecom Assets LP?

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. (Lowery/M. Watts)

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.

Pursuant to Rule 25-24.845, F.A.C., Rule 25-4.118, F.A.C., is incorporated into Chapter 25-24, and applies to CLECs.

Section 364.337(2), Florida Statutes, states in pertinent part:

A certificated competitive 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.

The authority for Rule 25-4.118, F.A.C., is found in Section 364.603, Florida Statutes, which is a section the Commission is authorized to waive.

Matrix 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 the Comtel customers and found it 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 Matrix nor Comtel has any outstanding complaints. Further, neither Matrix nor Comtel has any outstanding regulatory assessment fees, penalties or interest associated with their respective IXC registrations or CLEC certifications.

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 local and 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 order should become final upon issuance of a consummating order. This docket should remain open pending the cancellation of Comtel's CLEC Certificates and IXC Registrations. Upon completion of these actions, this docket should be closed administratively. (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 order should become final upon issuance of a consummating order. This docket should remain open pending the cancellation of Comtel's CLEC Certificates and IXC Registrations. Upon completion of these actions, this docket should be closed administratively.