

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: June 30, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (Curry) *KLC*
Office of the General Counsel (Evans) *Perera*

RE: Docket No. 100335-TX – Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to the transfer of customers from Global Crossing Telemangement, Inc. to Global Crossing Local Services, Inc.

AGENDA: 07/13/10 – 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\100335.RCM.DOC

RECEIVED-FPSC
 10 JUN 28 AM 9:18
 COMMISSION
 CLERK

Case Background

On June 22, 2010, Global Crossing Telemangement, Inc. (GCTM) and Global Crossing Local Services, Inc. (GCLS) (collectively, Petitioners) filed a joint petition for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code (F.A.C.), in order to facilitate the transfer of customers from GCTM to GCLS due to the merger of the two companies.

GCTM and GCLS are both wholly owned indirect subsidiaries of Global Crossing Limited. GCTM and GCLS are also certificated competitive local exchange companies (CLEC), pursuant to CLEC Certificate Nos. 5308 and 5574, respectively. As part of an internal corporate

TELEPHONE NUMBER DATE
 5293 JUN 28 2010
 FPSC-COMMISSION CLERK

Docket No. 100335-TX
Date: June 30, 2010

reorganization GCTM will merge into GCLS. The merger is scheduled to take place on or about September 30, 2010. Written notice of the proposed merger will be provided to GCTM customers around July 31, 2010.

Upon the merger, GCTM will transfer approximately 81 business customers in Florida to GCLS. The Petitioners are seeking a waiver of Rule 25-4.118, F.A.C., so that GCLS will not have to obtain authorization from each customer that is transferred. Without this waiver, GCLS would be required to obtain signed letters of authorization (LOAs) or third party verifications (TPVs) from each customer. With the waiver, GCLS can protect itself from possible complaints of unauthorized carrier changes. The waiver will also be beneficial to the customers as they will not be subject to a loss of service on the date of transfer.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.335, 364.336, 364.337, 364.345, 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 carrier selection requirements of Rule 25-4.118, F.A.C., due to the transfer of customers from Global Crossing Telemanagement, Inc. to Global Crossing Local Services, Inc?

Recommendation: Yes, the Commission should approve the request for waiver of 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. **(Curry, Evans)**

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

Section 364.337(2), F.S., 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, F.S., which is a section the Commission is authorized to waive.

GCLS attests that this transfer will be transparent to all affected customers. There will be no changes to the rates, terms, or conditions of service. The customers will not incur any charges as a result of the transfer and all customer service contact information will remain the same. GCLS also does not plan to change any of the individual account executives that are assigned to many of the 81 accounts that the company will acquire from GCTM.

Currently, neither GCTM nor GCLS have any outstanding complaints. If complaints are filed against GCTM and are not resolved prior to the merger, GCLS will be responsible for resolving all outstanding complaints. Neither GCTM nor GCLS have any outstanding regulatory assessment fees, penalties or interest associated with their respective CLEC certificate.

Staff believes that in this instance it is in the public interest 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 service. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during the 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.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, F.A.C., within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested, this docket should be closed administratively upon notification from the Petitioners that the transaction is complete. **(Evans)**

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 administratively upon notification from the Petitioners that the transaction is complete.