

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of
Rule 25-4.118, F.A.C.,
Interexchange Carrier Selection,
by PNG Telecommunications, Inc.
d/b/a PowerNet Global
Communications.

DOCKET NO. 010289-TI
ORDER NO. PSC-01-1070-PAA-TI
ISSUED: May 3, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING WAIVER OF RULE 25-4.118,
FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On March 6, 2001, this Commission received a petition seeking
a waiver of the interexchange carrier selection requirements of
Rule 25-4.118, Florida Administrative Code, from PNG
Telecommunications, Inc. (PNG). PNG is a certificated interexchange
carrier (IXC) operating in Florida. The company informed us that
as a result of the acquisition of LDC Consultants, Inc. (LDC), a
certificated switchless rebiller, PNG agreed to purchase certain
customer accounts from LDC. These accounts are comprised of all

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customers that have selected LDC as their preferred carrier for outbound, inbound, and calling card services.

PNG has informed us upon Commission approval of the petition, the transferring company will send out a letter to all affected customers notifying them of the following: the pending change of their carrier selection to PowerNet Global Communications; that there will be no charges associated with the change; that services will be provided at rates comparable to or lower than those charged by the current carrier; and that they have the option to select a different long distance provider if they prefer. The initial notification will also include a toll-free customer inquiry number that customers may call for more information.

This is not the first request in which a certificated company purchasing the customer base of another certificated company has come before the Commission seeking a waiver of the interexchange carrier selection rules. This Commission has granted previous requests in Order Nos. PSC-00-1090-PAA-TI, issued June 6, 2000, and PSC-01-0050-PAA-TI, dated January 8, 2001.

RULE WAIVER

Pursuant to Rule 25-4.118(1), Florida Administrative Code, the provider of a customer shall not be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that an IXC 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; or (c) third party firm has verified the customer's requested change.

The basis for seeking a waiver of Rule 25-4.118(2), Florida Administrative Code, is set forth in Rule 25-24.455(4), Florida Administrative Code, which states 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(2), Fla. Statutes; [Now found in Section 364.337(4), F.S., 1999.]
- (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 which may serve the purposes of this Part.

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

We find that in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. The companies have provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. The customers will receive ample notification of the transfer and have the opportunity not to participate. 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 service. Furthermore, this waiver will prevent unnecessary slamming complaints during this transition.

Accordingly, the interexchange carrier selection requirements in Rule 25-4.118, Florida Administrative Code, are hereby waived for the customer accounts affected by PNG Telecommunications, Inc. d/b/a PowerNet Global Communications' purchase of the wireline customer base of LDC Consultants, Inc. This docket shall be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by this Commission's decision files a protest within 21 days of the issuance of the proposed agency action order.

Based on the foregoing, it is

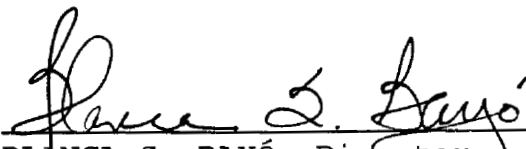
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ORDERED by the Florida Public Service Commission that the Petition by PNG Telecommunications, Inc. for waiver of Rule 25-4.118, Florida Administrative Code for the purchase of certain customer accounts from LDC Consultants, Inc. is hereby granted as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 3rd Day of May, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 24, 2001.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.