

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 011366-TI
ORDER NO. PSC-02-0017-PAA-TI
ISSUED: January 3, 2002

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 PNG TELECOMMUNICATIONS, INC. D/B/A
POWERNET GLOBAL COMMUNICATIONS' PETITION FOR LIMITED
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 October 17, 2001, we received a petition seeking a waiver
of the interexchange carrier selection requirements of Rule 25-
4.118, Florida Administrative Code, from PNG Telecommunications,
Inc. d/b/a PowerNet Global Communications (the Petitioner). The
Petitioner is a certificated interexchange company (IXC) operating
in Florida. The Petitioner agreed to purchase the customer base of

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Atlantic Telephone Company, Inc. (ATEL), on a cash basis; no assets or securities were exchanged.

The basis for seeking a waiver is set forth in Rule 25-24.455(4), Florida Administrative Code. We may consider whether the petition is in the public interest, whether market forces obviate the need for the provision in a particular instance, and whether reasonable alternative regulatory methods may serve the same purpose. Rule 25-24.490, Florida Administrative Code, incorporates Rule 25-4.118, Florida Administrative Code, into the IXC provisions of Chapter 25-24, thus the waiver provisions are applicable to a petition by an IXC for a waive of Rule 25-4.118, Florida Administrative Code.

The petition states that during the week of September 10, 2001, the Petitioner mailed a letter to all affected ATEL customers explaining the transfer and assuring them that the quality of service and low rates they received with ATEL will continue with the Petitioner. The affected ATEL customers were informed that they would continue to receive quality long distance services at comparable or lower rates from the Petitioner without interruption and without needed action. The affected ATEL customers were also reminded that they are under no obligation to take service from the Petitioner, and that they are free to select another company to transmit their long distance calls.

A copy of the letter sent to affected ATEL customers is attached to the petition as Exhibit A. The petition states that the company expected the transfer of the customers from ATEL to itself to be complete on or before November 15, 2001.

This is not the first request in which a certificated company purchasing the customer base of another certificated company has come before us seeking a waiver of the interexchange carrier selection rules. We granted previous requests in Order No. PSC-00-1090-PAA-TI, issued June 6, 2000, in Docket No. 000364-TI, and Order No. PSC-01-0050-PAA-TI, issued January 8, 2001, in Docket No. 001669-TI.

We are vested with jurisdiction over these matters pursuant to Sections 364.01, 364.337 and 364.603, Florida Statutes.

LIMITED WAIVER OF RULE 25.4.118, FLORIDA ADMINISTRATIVE CODE

Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's service provider 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: (1) The provider has a letter of agency from the customer requesting the change; (2) The provider has received a customer-initiated call for service; or (3) A third party firm 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, Florida Administrative Code, and applies to IXCs. Rule 25-24.455(4), Florida Administrative Code, states:

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., 2001.]

(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.

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 company has 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 appear to have received sufficient notification of the transfer and to have had the opportunity to choose another carrier. If prior authorization had been sought from the affected customers in accordance with Rule 25-4.118, Florida Administrative Code, customers may have failed to respond to the request for authorization or neglected to select another carrier, thereby losing their long distance service.

However, we are concerned that the Petitioner apparently notified the affected ATEL customers via a letter that was not approved by us more than a month prior to filing its petition with us. We note that in Docket No. 010289-TI, 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, the proposed customer notification letter originally submitted with the petition was found to be insufficient in that it failed to notify the prospective customers that the change would affect their local toll provider selection as well as their toll provider. Our staff requested that the Petitioner revise its customer notification letter before it would recommend to us that we grant the petition. By mailing the letter to affected customers prior to filing the petition, we are unable to ensure that the letter serves as an adequate substitute for the protections afforded customers against unauthorized carrier changes by Rule 25-4.118, Florida Administrative Code.

We are also concerned that the actual transfer of the customers may have begun as early as October 16, 2001, the day before the request for waiver was filed with us. The attachment to the petition marked by the Petitioner as "Exhibit B, FCC Notice," states that the ATEL customers would be transferred to the Petitioner on October 16, 2001. The petition itself, however, states that the transfer would be complete on or before November 15, 2001. In either case, it appears that customers are being transferred prior to our review and vote on the Petitioner's request for a waiver of Rule 25-4.118, Florida Administrative Code.

We understand that the dynamics of such business transactions can involve some level of uncertainty such that the company may not be able to provide an exact date that the customer base will be transferred. However, it appears that the Petitioner knew far enough in advance to prepare a notification letter and mail it out

to the affected ATEL customers more than a month before the initiation of the planned transfer action. We also note that the Petitioner notified the Federal Communications Commission one month before the planned transfer and, therefore, could have timely filed its petition.

The number of petitions for waiver of Rule 25-4.118, Florida Administrative Code, filed with us to date is small, but is certain to grow. We have, in at least one instance such as the first such waiver request filed by the Petitioner, approved a request for a waiver of Rule 25-4.118, Florida Administrative Code, that was filed after the affected customers had been notified. However, most such petitions appear to have been filed prior to the notification letter being sent to the affected customers and have requested our approval of the notification letters.

We do not intend to unnecessarily impede business transactions among telecommunications providers in Florida. However, requesting a waiver of a rule under our jurisdiction after the company appears to have violated the rule, or at such a time that it will have violated the rule prior to issuance of our order, appears to be improper and displays an unacceptable disregard for the authority of this Commission. We believe that, in the future, when companies intend to purchase or transfer customer bases, they should either file a timely petition for waiver of Rule 25-4.118, Florida Administrative Code, or obtain a signed Letter of Agency from each affected customer prior to switching the respective customer's service. Failure to timely take one of these actions could possibly result in a penalty for apparent unauthorized carrier changes of the affected customers and the issuance of credit to the affected customer's accounts in accordance with Rule 25-4.118(8), Florida Administrative Code.

Nevertheless, we find it appropriate that the interexchange carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived for the customer accounts affected by PNG Telecommunications, Inc. d/b/a PowerNet Global Communications' purchase of the customer base of Atlantic Telephone Company, Inc. Therefore, PNG Telecommunications, Inc. d/b/a PowerNet Global Communications' Petition for Limited Waiver of Rule 25-4.118, Florida Administrative Code, shall be granted.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that PNG Telecommunications, Inc. d/b/a PowerNet Global Communications' Petition For Limited Waiver of Rule 25-4.118, Florida Administrative Code, is hereby granted. It is further

ORDERED that this Order shall become final and effective upon the issuance of a Consummating Order unless a person whose substantial interests are affected files a protest within 21 days of the date of issuance of this Order as set forth below in the "Notice of Further Proceedings or Judicial Review." 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 January, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

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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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 24, 2002.

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.