

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint application for transfer of selected assets, including customer base, from AS Telecommunications, Inc. (holder of IXC Certificate No. 3510) to OneStar Long Distance, Inc. (holder of IXC Certificate No. 6042), for cancellation of Certificate No. 3510, and request for waiver of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

DOCKET NO. 011208-TI
ORDER NO. PSC-02-0166-PAA-TI
ISSUED: February 5, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING JOINT APPLICATION FOR TRANSFER OF SELECTED ASSETS,
INCLUDING CUSTOMER BASE, WAIVER OF RULE 25-4.118, FLORIDA
ADMINISTRATIVE CODE AND CANCELLATION OF INTEREXCHANGE
TELECOMMUNICATIONS CERTIFICATE

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.

CASE BACKGROUND

On September 19, 2001, we received a joint application for the transfer of selected assets, including the customer base, along with a cancellation request of IXC Certificate No. 3510, and a

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request for waiver of the interexchange carrier selection requirements of Rule 24-4.118, Florida Administrative Code, from AS Telecommunications, Inc. and OneStar Long Distance, Inc. OneStar Long Distance, Inc., (OneStar) is a certificated interexchange carrier (IXC), Certificate No. 6042, operating in Florida, who has agreed to purchase the customer accounts of AS Telecommunications, Inc. (AS). AS is certificated as an IXC switchless rebiller, Certificate No. 3510, also operating in Florida. The accounts to be acquired by OneStar are comprised of all customers that have selected AS as their preferred carrier for long distance services.

OneStar has informed us that a notification to AS customers will be accomplished by mailing a letter notifying them of the upcoming transfer to OneStar at comparable or lower rates, with no switching fees and no interruption of service. The letter will also state that the customers are free to change carriers if they are not satisfied and there will be no termination penalties.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.01, 364.335, 364.336, 364.337, and 364.603, Florida Statutes.

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) A 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 OneStar's purchase of customer accounts served by AS. 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.

CANCELLATION OF CERTIFICATE

AS, holder IXC Certificate No. 3510, has requested the cancellation of IXC Certificate No. 3510. AS has complied with the provision of Rule 25-24.474(2), Florida Administrative Code, by providing adequate notice in writing of its request for cancellation of its IXC Certificate and by submitting its Regulatory Assessment Fees (RAFs) for 2000. Accordingly, we find it appropriate to cancel IXC Certificate No. 3510 upon completion of the transfer of the customer base and selected assets to OneStar.

In addition, under Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF of \$50 if the certificate was active during any portion of the calendar year. A RAFS return notice for 2001 has been mailed to AS for payment by January 30, 2002. Since the IXC certificate held by AS will be cancelled when the transfer of the assets and customer base is completed the company will also owe the minimum RAFs for 2002. Neither the cancellation of its certificate nor the failure to receive a RAFS return notice for the year 2001 or 2002 shall relieve AS from its obligation to pay RAFS for the years 2001 and 2002.

Therefore, based on the foregoing, it is

ORDEED by the Florida Public Service Commission that the application by OneStar Long Distance, Inc. and AS Telecommunications, Inc. for approval of the transfer of selected assets, including the customer base, from AS Telecommunications, Inc. to OneStar Long Distance, Inc. is hereby granted as set forth in the body of this Order. It is further

ORDERED by the Florida Public Service Commission that the Petition by OneStar Long Distance, Inc. and AS Telecommunications, Inc. for waiver of Rule 25-4.118, Florida Administrative Code in order to facilitate the transfer of the customer base of AS Telecommunications, Inc. is hereby granted as set forth in the body of this Order. It is further

ORDERED by the Florida Public Service Commission that AS Telecommunications, Inc.'s certificate number No. 3510 to provide

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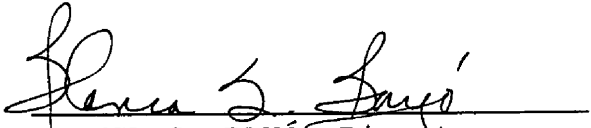
Interexchange Telecommunications services is hereby canceled, effective upon the completion of the transfer of assets and customer base to OneStar Long Distance, Inc.

ORDERED that AS Telecommunications, Inc. shall remit Regulatory Assessment Fees for the years 2001 and 2002. 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 5th Day of February, 2002.



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

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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 February 26, 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.