

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of asset purchase agreement whereby NUI Telecom, Inc. (holder of ALEC Certificate No. 7328 and IXC Certificate No. 4824) will purchase business and substantially all telecommunications assets of Telcorp Ltd. Company (holder of IXC Certificate No. 3160), request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., and request for cancellation of IXC Certificate No. 3160.

DOCKET NO. 020519-TP
ORDER NO. PSC-02-1020-PAA-TP
ISSUED: July 26, 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 APPROVING ASSET PURCHASE AGREEMENT; CANCELLING
INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE; AND
GRANTING WAIVER OF THE CARRIER SELECTION REQUIREMENT 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.

I. CASE BACKGROUND

On June 14, 2002, we received a joint request for approval of the asset purchase agreement from NUI Telecom, Inc. (NUI Telecom)

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and Telcorp Ltd. Company (Telcorp), whereby NUI Telecom, Inc. (holder of IXC Certificate No. 4824 and ALEC Certificate No. 7328) will purchase the business and substantially all telecommunications assets of Telcorp Ltd. Company (holder of IXC Certificate No. 3160); and cancellation of Telcorp's Certificate No. 3160.

Customers obtaining long distance service from Telcorp will be transferred to NUI Telecom at comparable rates, with no switching fees or interruption of service. Upon consummation of the proposed transaction, notice will be provided to all affected customers prior to the transfer by means of a billing notice.

Further, NUI Telecom is seeking a waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, for the transfer of certain long distance customers from Telcorp to NUI Telecom.

There are no past due Regulatory Assessment Fees for Telcorp or NUI Telecom. We are vested with jurisdiction in this matter pursuant to Sections 364.337 and 364.603, Florida Statutes.

II. DISCUSSION

Asset Purchase Agreement and Cancellation of Certificates

Under the asset purchase agreement NUI Telecom will purchase substantially all of the telecommunications assets of Telcorp (holder of IXC Certificate No. 3160). Additionally, NUI Telecom Inc. has requested cancellation of Telcorp's IXC Certificate No. 3160. Customers obtaining long distance service from Telcorp will be transferred to NUI Telecom at comparable rates, with no switching fees or interruption of service. Upon consummation of the proposed transaction, notice will be provided to all affected customers prior to the transfer by means of a billing notice. We have reviewed the company's notification and believe it is adequate.

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 the year 2002 will be mailed to Telcorp for payment by January 30th. Neither the cancellation of its certificate nor the failure to receive a RAFs Return notice for the

year 2002 shall relieve Telcorp from its obligation to pay RAFs for the year 2002.

Accordingly, we find that the asset purchase agreement, and request for cancellation of Telcorp's certificate shall be approved.

Waiver of the Carrier Selection Requirements

Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that a carrier 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;
- (c) A third party firm has verified the customer's requested change.

Pursuant to Rules 25-24.490 and 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs and ALECs.

Rule 25-24.455(4), Florida Administrative Code, reads 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(4), Fla. Statutes;
- (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 may serve the purpose of this Part.

Furthermore, Section 364.337(4), Florida Statutes, provides, in pertinent part: "...a certificated intrastate interexchange telecommunications company may petition the commission for a waiver for some or all of the requirements of this chapter [364], except ss.364.16, 364.335(3), or subsection (5)."

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 attested that they 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 companies have further attested that their customers will receive ample notification of the transfer and will not experience any interruption of service, rate increase, or switching fees. Further, we have reviewed the customer notification and believe it is adequate.

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, we believe that granting this waiver will avoid unnecessary slamming complaints during this transition.

Accordingly, we find that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, shall be waived in this instance.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that NUI Telecom, Inc. and Telcorp Ltd. Company's request for approval of the asset purchase agreement between NUI Telecom, Inc. and Telcorp Ltd. Company is hereby approved.

ORDERED that Telcorp Ltd. Company's Certificate No. 3160 to provide Interexchange Telecommunications services is hereby canceled, effective June 23, 2002. It is further

ORDERED that Telcorp Ltd. Company shall remit Regulatory Assessment Fees for the year 2002. It is further

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ORDERED that the carrier selection requirements in Rule 2-4.118, Florida Administrative Code, are waived in this instance. 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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" 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 26th day of July, 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 August 16, 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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.