

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by PNG
Telecommunications, Inc. d/b/a
PowerNet Global Communications
for limited waiver of IXC
carrier selection requirements
in Rule 25-4.118, F.A.C.

DOCKET NO. 020106-TI
ORDER NO. PSC-02-1044-PAA-TI
ISSUED: August 1, 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 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.

CASE BACKGROUND

On February 8, 2002, 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. d/b/a PowerNet Global Communications (PNG). PNG is a certificated interexchange company (IXC) operating in Florida that has agreed to purchase the customer base of SONIX4U, Inc. (SONIX4U), on a cash basis; no assets or securities will be exchanged.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

The petition states that during the week of January 10, 2002, PNG mailed a letter to all affected SONIX4U customers explaining the transfer and assuring them that the same quality long distance services they received in the past from SONIX4U will be provided at comparable or lower rates by PNG without interruption and without needed action on the part of the customers. The affected SONIX4U customers were also reminded that they are under no obligation to take service from PNG and that they are free to select another company to transmit their long distance calls. The petition states that the transfer was done February 23, 2002. However, we note that there have been no slamming complaints involving the transition of customers from SONIX4U to PNG.

Several petitions have been filed with this Commission wherein a certificated company has made the request to purchase the customer base of another certificated company and sought a waiver of the interexchange carrier selection rules. We granted previous requests in Order Nos. PSC-00-1090-PAA-TI issued June 6, 2000; PSC-01-0050-PAA-TI, issued January 8, 2001 and PSC-02-0017-PAA-TI, issued January 28, 2002.

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

DISCUSSION OF ISSUES

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:

- (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; and
- (c) 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., 2002.]

(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 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.

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We find that the interexchange carrier selection requirements in Rule 25-4.118, Florida Administrative Code, should be waived for the customer accounts affected by PNG Telecommunications, Inc. d/b/a PowerNet Global Communications' purchase of the customer base of SONIX4U.

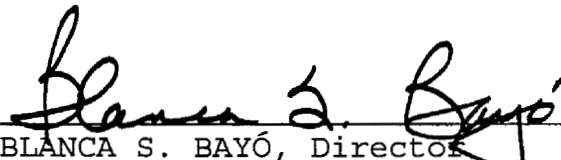
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code are waived in this instance.

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" 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 1st day of August, 2002.



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

(S E A L)

JAE

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 22, 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.