

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to purchase of customer base of North American Communications Control, Inc. (holder of IXC Cert. No. 4463) by A.R.C. Networks, Inc. d/b/a InfoHighway (holder of IXC Certificate No. 4707).

DOCKET NO. 020757-TI  
ORDER NO. PSC-02-1185-PAA-TI  
ISSUED: September 3, 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

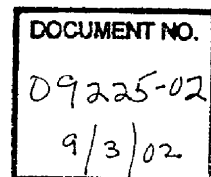
NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING WAIVER OF CARRIER SELECTION REQUIREMENTS OF RULE  
25-4.118, FLORIDA ADMINISTRATIVE CODE

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 July 18, 2002, we received a request for the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code due to the transfer of customer base from North American Communications Control, Inc. (NACC), holder of IXC



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Certificate No. 4463, to A.R.C. Networks, Inc. d/b/a InfoHighway (InfoHighway), holder of IXC Certificate No. 4702.

Customers obtaining long distance service from North American Communications Control, Inc. will be transferred to InfoHighway at comparable rates, with no switching fees or interruption of service. On June 28, 2002, NACC and InfoHighway sent NACC customers a notice explaining the transfer to InfoHighway and informing the customers that they have the option of selecting another service provider.

Further, there are no past due Regulatory Assessment Fees owed for NACC or InfoHighway. The Commission is vested with jurisdiction in this matter pursuant to Section 364.337 and 364.603, Florida Statutes.

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 of some or all the requirements of this chapter [364], except ss.364.16, 364.335(3), or subsection (5). The commission may grant such petition if determined to be in the public interest."

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. We have also reviewed the customer notification and find that 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, granting this waiver will avoid unnecessary slamming complaints during this transition.

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

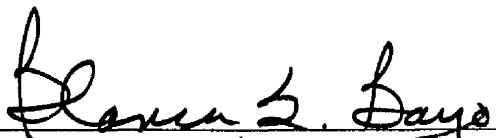
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the petition for waiver of the carrier selection requirements shall be to facilitate the purchase of the customer base of North American Communications Control, Inc. by A.R.C. Networks, Inc. d/b/a InfoHighway is hereby granted. 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" 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 September, 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 September 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/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.