

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited waiver of carrier selection requirements of Rule 25-4.118, F.A.C., for transfer of customer base of Mpower Communications Corp. (holder of IXC Certificate No. 5752 and ALEC Certificate No. 5279) to Florida Digital Network, Inc. (holder of IXC Certificate No. 7048 and ALEC Certificate No. 5715).

DOCKET NO. 030080-TP  
ORDER NO. PSC-03-0252-PAA-TP  
ISSUED: February 20, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING WAIVER OF  
CARRIER SELECTION REQUIREMENTS OF RULE 25-4.118, F.A.C.

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 January 24, 2003, we received a petition from Florida

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Digital Network, Inc. (FDN), holder of Interexchange Telecommunications Service Certificate No. 7048 and Alternative Local Exchange Certificate No. 5715, requesting a waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, for the transfer of local and long distance customers from Mpower Communications Corp. (Mpower), holder of Interexchange Telecommunications Service Certificate No. 5752 and Alternative Local Exchange Certificate No. 5279.

On January 30, 2003, we received a letter clarifying the petition, including a copy of a joint letter to the Mpower customers and a Notice of Transfer of Telephone Service. There are no outstanding Regulatory Assessment Fees owed by the entities mentioned above.

We are vested with jurisdiction in this matter pursuant to Sections 364.335, 364.337, and 364.603, Florida Statutes.

#### Analysis

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, respectively.

Rule 24-24.455(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(2), Florida Statutes, reads in part:

A certificated alternative local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (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. FDN has attested that it has provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to

ORDER NO. PSC-03-0252-PAA-TP  
DOCKET NO. 030080-TP  
PAGE 4

the customers. We have reviewed the notice that will be sent to the customers. The customers will receive ample notification of the transfer and should not experience any interruption of service, rate increase, or switching fees.

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 local and long distance service. Furthermore, we find that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, are waived in this instance.

Based on the foregoing, it is

ORDERED that the petition of Florida Digital Network, Inc. for waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, 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.

ORDER NO. PSC-03-0252-PAA-TP  
DOCKET NO. 030080-TP  
PAGE 5

By ORDER of the Florida Public Service Commission this 20th  
Day of February, 2003.

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 )

LF

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

ORDER NO. PSC-03-0252-PAA-TP  
DOCKET NO. 030080-TP  
PAGE 6

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 March 13, 2003.

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.