

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to allow Covista, Inc. to transfer certain commercial long distance customer accounts to PaeTec Communications, Inc.

DOCKET NO. 040607-TI  
ORDER NO. PSC-04-0818-PAA-TI  
ISSUED: August 23, 2004

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER  
GRANTING WAIVER OF CARRIER SELECTION REQUIREMENTS  
OF RULE 25-4.188, 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.

On June 26, 2004, this Commission received a petition seeking a waiver of the interexchange carrier selection requirements of Rule 25-4.118, Florida Administrative Code, from Covista, Inc. (Covista) and PAETEC Communications, Inc. (PAETEC). Covista (Registration No. TI119) and PAETEC (Registration No. TJ132) are authorized to provide intrastate interexchange telecommunications services in Florida. Both companies informed this Commission that this request is to transfer certain commercial long distance customers of Covista to PAETEC.

Rule 25-24.490, Florida Administrative Code, incorporates Rule 25-4.118, Florida Administrative Code, thereby extending applicability to interexchange carriers. The basis for seeking a waiver is set forth in Rule 25-24.455(4), Florida Administrative Code. This Commission may consider whether the petition is in the public interest, whether market forces obviate the need for the provision in a particular instance, and whether reasonable alternative regulatory methods may serve the same purpose.

DOCUMENT NUMBER-DATE

09177 AUG 23 04

FPSC-COMMISSION CLERK

PAETEC has determined that the acquisition of certain commercial long distance customers from Covista will enable it to expand its operations in a cost efficient manner, thereby enhancing its competitive position and ability to provide integrated telecommunications services to customers in Florida, as well as other states.

This Commission is vested with jurisdiction in this matter pursuant to Sections 364.01, 364.337 and 364.603, Florida Statutes.

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;
- (c) A third party firm has verified the customer's requested change.

Rule 25-24.455(4), Florida Administrative Code, states the following:

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), FL. 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 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, and applies to IXCs. As such, the waiver provisions of Rule 25-24.455 are applicable to Rule 25-4.118 as it 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 provided for a transparent transition while insuring that the affected customers understand the available choices with the least amount of disruption to the customers. The customers received notification of the

ORDER NO. PSC-04-0818-PAA-TI  
DOCKET NO. 040607-TI  
PAGE 3

transfer and will have the opportunity to decide whether or 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, we find that granting this waiver will reduce the likelihood of slamming.

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

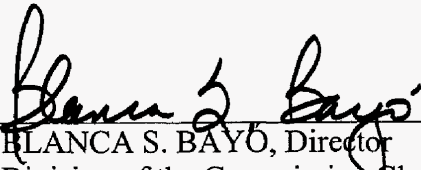
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, are waived in this instance for PAETEC Communications, Inc. 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 if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of this Order, this docket should be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 23rd day of August, 2004.

  
\_\_\_\_\_  
BLANCA S. BAYO, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

JPR

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 13, 2004.

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.