

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to purchase of substantially all telecommunications assets of Motion Telecom, Inc. by Network US, Inc. d/b/a CA Affinity.

DOCKET NO. 040808-TI  
ORDER NO. PSC-04-0981-PAA-TI  
ISSUED: October 8, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
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 August 2, 2004, this Commission received a joint petition from Nowalsky, Bronston & Gothard, on behalf of their clients, Network US, Inc. d/b/a CA Affinity (Network US) and Motion Telecom, Inc. (Motion Telecom), requesting approval for the waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code (F.A.C.), due to Network US's purchase of Motion Telecom's customer base and related assets.

Rule 25-4.490, F.A.C., incorporates Rule 25-4.118, F.A.C., thereby extending applicability to interexchange carriers (IXCs). The basis for seeking a waiver is set forth in Rule 25-24.455(4), F.A.C. 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.

Network US has attested that it will provide for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Staff has reviewed the notice that will be sent to Motion Telecom's customers and

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found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees. Further, Motion Telecom and Network US do not have any outstanding regulatory assessment fees, penalties or interest.

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), F.A.C., the provider of a customer shall not be changed without the customer's authorization. Rule 25-4.118(2), F.A.C., 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), F.A.C., 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, F.A.C., Rule 25-4.118, F.A.C., 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, F.A.C. 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 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

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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, F.A.C., 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 Network US, Inc. d/b/a CA Affinity. 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 twenty-one (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 8th day of October, 2004.

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

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

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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 October 29, 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.