

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to acquisition of all telecommunications assets of OneStar Long Distance, Inc., IXC Registration No. TJ759, by Telrite Corporation, IXC Registration No. TJ776; and request for removal from register of IXC Registration No. TJ759 effective September 8, 2004.

DOCKET NO. 041055-TI
ORDER NO. PSC-04-1103-PAA-TI
ISSUED: November 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 25-4.118, F.A.C. AND CANCELLATION OF IXC TARIFF AND
REMOVAL FROM THE REGISTER

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.

I. Waiver of the Carrier Selection Requirements

A. Case Background

On September 8, 2004, this Commission received a joint petition seeking a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code (F.A.C.), from OneStar Long Distance, Inc. (OneStar) and Telrite Corporation (Telrite) due to Telrite's purchase of OneStar's customer base and other telecommunications assets. The petition also requests removal of OneStar (Registration No. TJ759) from the register effective September 8, 2004.

Rule 25-24.490, 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

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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.

Since February 3, 2004, OneStar has been operating under the protection of the United States Bankruptcy Court for the Southern District of Indiana, Evansville Division (the Bankruptcy Court.) In connection with the bankruptcy proceeding, the Bankruptcy Court conducted an auction of OneStar's assets. On July 16, 2004, the Bankruptcy Court issued an order that approved the purchase by Telrite of OneStar's assets.

The companies submitted this petition to allow for the expeditious completion of the acquisition. To ensure a seamless transition and uninterrupted service to OneStar's customers, OneStar and Telrite entered into a management agreement whereby Telrite shall provide financial and managerial support to OneStar, under OneStar's oversight, in order to fund continued operations until such time as regulatory approvals have been obtained. The customers will be informed of the acquisition and given the opportunity to switch their service to another carrier.

Telrite 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. Our staff has reviewed the notice that will be sent to OneStar's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Additionally, since Telrite will acquire substantially all of the assets of OneStar and OneStar will thereafter cease operations in Florida, OneStar will no longer require authority to provide interexchange telecommunications services in Florida. Therefore, OneStar requests this Commission to remove Registration No. TJ759 from the register. Further, Telrite does not have any outstanding Regulatory Assessment Fees (RAFs), penalties or interest through 2003. OneStar has not paid its 2003 RAFs.

This Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336 and 364.603, Florida Statutes (F.S.).

B. Jurisdiction

Pursuant to Rule 25-4.118(1), F.A.C., a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), F.A.C., 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.

Rule 25-24.455(4), F.A.C., states in pertinent part:

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, F.S.; (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.

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.

C. Conclusion

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. 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 avoid unnecessary slamming complaints during this transition.

Therefore, we find that the carrier selection requirements in Rule 25-4.118, F.A.C., be waived in this instance.

II. Cancellation of Tariff and Removal from the Register Due to Bankruptcy

A. Case Background

This Commission received notice that OneStar had filed for Chapter 11 bankruptcy protection when it filed a joint petition with Telrite for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. In addition, OneStar stated in its petition that its customers would be transferred to Telrite upon approval from this Commission, it would no longer be providing telecommunications services in Florida, and requested removal of its registration from the register.

The company has advised this Commission that, due to the bankruptcy, it does not have the funds to pay any outstanding RAFs, and has requested that this Commission write off this debt.

B. Jurisdiction

Section 364.336, F.S., requires the payment of RAFs by January 30 of the subsequent year for telecommunications companies, and provides for late payment charges as outlined in Section 350.113, F.S., for any delinquent amounts. Section 364.02, F.S., establishes the requirements for requesting cancellation of a company's tariff or removal from the register:

C. Conclusion

Therefore, we grant OneStar cancellation of its tariff and removal from the register of Registration No. TJ759 with an effective date of September 8, 2004, due to bankruptcy; notify the Division of the Commission Clerk and Administrative Services that any unpaid RAFs, including statutory penalty and interest charges, should not be sent to the Florida Department of Financial Services for collection and request permission to write-off the uncollectible amounts; and require the company to immediately cease and desist providing intrastate interexchange telecommunications services in Florida.

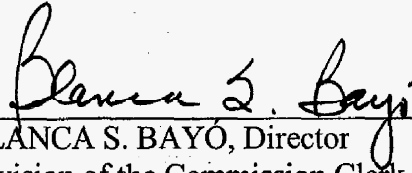
Based on the foregoing, it is

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 Telrite Corporation. 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 November, 2004.



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

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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 November 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.