

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to transfer of customers from Alternative Telecommunication Services, Inc. d/b/a Second Chance Phone to Ganoco, Inc. d/b/a American Dial Tone.

DOCKET NO. 041440-TX  
ORDER NO. PSC-05-0320-PAA-TX  
ISSUED: March 21, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON  
LISA POLAK EDGAR

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.

On December 27, 2004, the Florida Public Service Commission (the Commission) received a petition seeking a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, from Ganoco, Inc. d/b/a American Dial Tone (ADT) and Alternative Telecommunication Services, Inc. d/b/a Second Chance Phone (SCP) due to ADT's purchase of the customer base of SCP.

Rule 25-24.845, Florida Administrative Code, incorporates Rule 25-4.118, Florida Administrative Code, thereby extending applicability to competitive local exchange telecommunications companies (CLECs.) The basis for seeking a waiver is set forth in Section 364.337(2), Florida Statutes. The Commission may consider whether the petition is in the public interest.

ADT has attested that it provided for a seamless transition while ensuring that the affected customers understood available choices with the least amount of disruption to the customers. The Commission reviewed the notice that was sent to SCP customers and found it to be adequate. The customers did not experience any interruption of service, rate increase, or switching fees.

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FPSC-COMMISSION CLERK

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, 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 (LOA) . . . from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service . . . ;
- (c) A firm that is independent and unaffiliated with the provider . . . has verified the customer's requested change. . .

Pursuant to Rule 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to CLECs.

Section 364.337(2), Florida Statutes, states in pertinent part:

A certificated competitive 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.

The authority for Rule 25-4.118, Florida Administrative Code, is found in Section 364.603, Florida Statutes, which is a section the Commission is authorized to waive.

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 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 Ganoco, Inc. d/b/a American Dial Tone 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 21st day of March, 2005.

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

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

(SEAL)

DRG

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 April 11, 2005.

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.