

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for transfer of CLEC Certificate No. 4434 from EPICUS, Inc. d/b/a EPICUS to Epicus Communications Group, Inc.; for acknowledgment of cancellation of IXC Registration No. TI550 held by EPICUS, Inc. d/b/a EPICUS, to be effective on or before December 31, 2005; for acknowledgment of registration of Epicus Communications Group, Inc. as an intrastate interexchange telecommunications company, to be effective on or before December 31, 2005; and for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.

DOCKET NO. 050607-TP  
ORDER NO. PSC-05-1137-PAA-TP  
ISSUED: November 10, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
LISA POLAK EDGAR  
ISILIO ARRIAGA

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING TRANSFER OF CLEC CERTIFICATE,  
REMOVING IXC REGISTRATION, ACKNOWLEDGING IXC REGISTRATION,  
AND GRANTING WAIVER OF CARRIER SELECTION REQUIREMENTS  
OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE

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.

Case Background

Epicus, Inc. d/b/a Epicus (Epicus) is a competitive local exchange telecommunications company (CLEC) and is authorized by this Commission pursuant to CLEC Certificate No. 4434 to provide competitive local exchange services in Florida. Epicus also provides intrastate interexchange telecommunications services and is a registered intrastate interexchange telecommunications company (IXC), Registration No. TI550. On October 25, 2004, Epicus and

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Epicus Communications Group, Inc. filed for bankruptcy. As part of the company's bankruptcy reorganization efforts, Epicus Communications Group, Inc. plans to acquire all of the assets and business operations of Epicus.

On September 19, 2005, we received an application for transfer of CLEC Certificate No. 4434 from Epicus to Epicus Communications Group, Inc., for acknowledgement of removal from the registry of Epicus' IXC Registration No. TI550, and for acknowledgement of registration of Epicus Communications Group, Inc. as an IXC. In addition, Epicus Communications Group, Inc. requested waiver of Rule 25-4.118, Florida Administrative Code, due to the transfer of assets and customers (local and long distance) from Epicus to Epicus Communications Group, Inc.

We have jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, 364.345, and 364.603, Florida Statutes.

#### Analysis

##### *Request for Transfer of CLEC Certificate*

Pursuant to Section 364.345(2), Florida Statutes, a telecommunications company may not sell, assign, or transfer its certificate or any portion thereof without (a) a determination by the Commission that the proposed sale, assignment, or transfer is in the public interest; and (b) the approval of the Commission.

After reviewing the company's application for transfer, we find that the proposed transaction would not adversely affect the customers of Epicus, and that Epicus Communications Group, Inc. will continue to provide the same services that are currently being provided by Epicus. Epicus Communications Group, Inc. will also maintain the same rates and the same terms and conditions of service that Epicus currently provides. We find it to be in the public interest to approve the transfer of CLEC Certificate No. 4434 from Epicus to Epicus Communications Group, Inc. Therefore, we hereby approve the transfer of CLEC Certificate No. 4434 from Epicus to Epicus Communications Group, Inc.

CLEC Certificate No. 4434 shall be amended to reflect that Epicus Communications Group, Inc. is the holder.

If this Order becomes final and effective, it shall serve as Epicus Communications Group, Inc.'s CLEC certificate. Epicus Communications, Group, Inc. should, therefore, retain this Order as proof of certification.

##### *Request to Remove IXC Registration*

On September 19, 2005, we received a request from Epicus for acknowledgement of removal from the registry of Epicus' IXC Registration No. TI550, effective on or before December 31, 2005. Epicus does not have any delinquent IXC regulatory assessment fees,

penalties or interest. Accordingly, we hereby acknowledge Epicus' request to remove Registration No. TI550 from the register, effective on or before December 31, 2005.

*Application for Registration as an IXC*

On September 19, 2005, Epicus Communications Group, Inc. provided contact information to be acknowledged as a registered intrastate interexchange company. Epicus Communications Group, Inc. will adopt the current tariff that we have on file for Epicus as its own tariff. We find that the documents received meet the requirements of Sections 364.02(13) and 364.04, Florida Statutes, and assign IXC Registration No. TK023 to the Epicus Communications Group, Inc. Therefore, we hereby acknowledge the registration of Epicus Communications Group, Inc. as an intrastate interexchange company effective on or before December 31, 2005.

*Waiver of the Carrier Selection Requirements*

Pursuant to Rule 25-4.118, 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 25-24.475(3), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(2), Florida Administrative Code, states:

An IXC may petition for a waiver of any provision of this Part. The waiver shall be granted in whole, granted in Part or denied based on the following:

- (a) The factors enumerated in Section 364.337(4), Florida 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;
- (c) Alternative regulatory requirements for the company which may serve the purposes of this part; and
- (d) Whether the waiver is in the public interest.

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 public interest.

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

Epicus Communications Group, Inc. has attested that it will provide for a seamless transition while ensuring that the affected customers will continue to receive all of the features, terms and conditions of service, and rates that the customers currently receive from Epicus. The customers should not experience any interruption of service or incur any switching fees. We have reviewed the notice that will be sent to Epicus' customers and find it to be adequate. Epicus Communications Group, Inc. has also indicated that it will work to resolve any complaints that customers may have against Epicus that have not been resolved prior to the transition.

Epicus does not have any outstanding regulatory assessment fees, penalties or interest associated with either its CLEC certificate or IXC registration. The company shall pay its 2005 regulatory assessment fees within 30 days after the issuance of the Consummating Order.

We hereby find in this instance that it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. 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, granting this waiver will avoid unnecessary slamming complaints during this transition. Accordingly, we hereby approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from Epicus to Epicus Communications Group, Inc.

#### Conclusion

This Order shall become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by this Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of this Order. If this Order is not protested, this Docket shall remain open pending receipt of payment of the 2005 regulatory assessment fees by Epicus for both its CLEC and IXC operations. If Epicus fails to pay its 2005 regulatory assessment fees, then this Docket shall remain open pending further action.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Epicus, Inc. d/b/a Epicus' request for transfer of CLEC Certificate No. 4434 from Epicus, Inc. d/b/a Epicus to Epicus Communications Group, Inc. is hereby approved. It is further

ORDERED that CLEC Certificate No. 4434 shall be amended to reflect that Epicus Communications Group, Inc. is the holder of this certificate. It is further

ORDERED that this Order shall serve as Epicus Communications Group, Inc.'s certificate and should be retained by Epicus Communications Group, Inc. as proof of certification. It is further

ORDERED that Epicus, Inc. d/b/a Epicus' request to remove Registration No. TI550 from the register, effective on or before December 31, 2005, is hereby acknowledged. It is further

ORDERED that the registration of Epicus Communications Group, Inc. as an intrastate interexchange company effective on or before December 31, 2005, is hereby acknowledged. It is further

ORDERED that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, are waived in this instance for Epicus Communications Group, 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 this Order is not protested, this Docket shall remain open pending the receipt of payment of the 2005 regulatory assessment fees by Epicus, Inc. d/b/a Epicus for both its CLEC certificate and IXC registration. Furthermore, if Epicus, Inc. d/b/a Epicus fails to pay its 2005 regulatory assessment fees, then this Docket shall remain open pending further action.

By ORDER of the Florida Public Service Commission this 10th day of November, 2005.

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

By: Marcia Sharma  
Marcia Sharma, Assistant 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 December 1, 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.