

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for transfer of and name change on CLEC Certificates 5687, 4695, and 4699 held by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc., respectively, to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions, respectively, and for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., effective upon written notification from Comtel Telcom Assets LP that transfer of assets is complete.

DOCKET NO. 050647-TX

In re: Acknowledgment of registrations as intrastate interexchange telecommunications companies by Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions; acknowledgment of cancellation of IXC Registration Nos. TI922, TI070, and TI291 by Excel Telecommunications, Inc., VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications, and VarTec Solutions, Inc., respectively; and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.; effective upon written notification from Comtel Telcom Assets LP that transfer of assets is complete.

DOCKET NO. 050648-TI

ORDER NO. PSC-05-1241-PAA-TX

ISSUED: December 19, 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

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING TRANSFER OF AND NAME CHANGE
ON CLEC CERTIFICATES AND 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.

I. Case Background

On September 26, 2005, we received a request for the transfer of and name change on Competitive Local Exchange Company (CLEC) Certificates 5687, 4695, and 4699 held by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. (collectively, VarTec Companies) to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions (collectively, Comtel Companies); and acknowledgment of registration as intrastate interexchange telecommunications (IXC) companies by the Comtel Companies; acknowledgment of cancellation of IXC Registration Nos. TI922, TI070, and TI291 by the VarTec Companies; and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.

The VarTec Companies filed for Chapter 11 bankruptcy on November 1, 2004, in the Dallas Division of the United States Bankruptcy Court for the Northern District of Texas (Court) consolidated under Case No. 04-81694-HDH-11. As part of the bankruptcy process, the VarTec Companies entered into an asset purchase agreement with Comtel Investments LLC. The parties executed the asset purchase agreement on July 25, 2005, which was subsequently approved by the Court on July 27, 2005.

The parties anticipate that all transactions will be finalized by the end of 2005. However, Comtel Telcom Assets LP requests permission to provide written notice to this Commission of the date that certificate transfers, IXC registrations and IXC cancellations should take effect. The IXC cancellations for the VarTec Companies and IXC registrations for the Comtel Companies are being processed in accordance with Section 2.07.C of the Administrative Procedures Manual and are not addressed in this Order.

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

II. Analysis

A. Request for Transfer and Name Change

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.

Upon review and consideration of the application, we find that the proposed transactions would not adversely affect customers because the Comtel Companies shall continue to provide the same services that are currently provided by the VarTec Companies. The Comtel Companies shall adopt the current VarTec Companies' price lists that are on file with this Commission. Additionally, the customers shall retain the same rates, terms, and conditions of service as currently provided by the VarTec Companies.

Based on the foregoing, we hereby approve the transfer of and name change on CLEC Certificate Nos. 5687, 4695, and 4699 held by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions, effective upon written notification from Comtel Telcom Assets LP that the transfer of assets is complete.

CLEC Certificate Nos. 5687, 4695, and 4699 shall be amended to reflect that Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions are the holders.

If this Order becomes final and effective, it shall serve as Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions' proof of certification.

B. Waiver of Carrier Selection Requirements

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 25-24.475(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 CLEC's.

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 this Commission is authorized to waive.

Comtel Telcom Assets LP 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 in service. The customers should not experience any interruption of service, rate increase, or switching fees. It appears that the transfer process will be transparent to the end users because the bills will continue to bear the same company names.¹

In addition, Comtel Telcom Assets LP provided the following statements in correspondence dated November 7, 2005, regarding outstanding consumer complaints:

"...Once the transaction is consummated, it is anticipated that the PSC may initially contact Comtel's Regulatory Department for assistance with complaint matters involving customers from VarTec Telecom, Inc., including Clear Choice Communications, Excel Telecommunications, Inc. or VarTec Solutions, Inc.

¹ The Comtel Companies have registered the VarTec Companies' names as fictitious names.

Based on the circumstances of each complaint matter, Comtel and the VarTec Companies will determine responsibility between the two parties, while ensuring a timely resolution for the customer. As with the overall transaction, the process will be seamless to the customer. The toll-free customer service telephone numbers used by customers are expected to remain unchanged post-consummation.”

Excel Telecommunications, Inc., VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications, and VarTec Solutions, Inc. do not have any outstanding regulatory assessment fees, penalties or interest associated with either their CLEC certificates or IXC registrations subsequent to their post-petition Chapter 11 bankruptcy filing date. The companies do have outstanding regulatory assessment fees owed prior to the pre-petition Chapter 11 bankruptcy filing date. Payments of pre-petition debts owed by the VarTec Companies will be made in accordance with instructions provided by the Court.

The VarTec companies state they will pay their 2005 regulatory assessment fees at the time written notification of the completed transfer of assets is submitted to this Commission. If the transaction is completed by December 31, 2005, the VarTec Companies shall only owe regulatory assessment fees for 2005, which requires payment no later than January 30, 2006. If the transaction is completed on or after January 1, 2006, the VarTec companies shall also owe regulatory assessment fees for 2006.

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. 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, we find that granting this waiver will avoid unnecessary slamming complaints during this transition.

We hereby grant the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions.

III. Conclusion

This Order shall become final and effective upon the issuance of a consummating order, unless persons whose substantial interests are affected by this proposed agency action files a protest within 21 days of the issuance this Order. These Dockets shall be closed administratively upon receipt of written notification from Comtel Telcom Assets LP that the transfer of assets is complete and upon receipt of payment of the 2005 and 2006 regulatory assessment fees (if applicable) by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. for both its CLEC and IXC operations. If VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. fail to pay their

2005 and 2006 regulatory assessment fees (if applicable), this matter shall be addressed by this Commission at a future Agenda Conference.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc.'s request for transfer of CLEC Certificate Nos. 5687, 4695, and 4699 from VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions is hereby approved. It is further

ORDERED that CLEC Certificate Nos. 5687, 4695, and 4699 shall be amended to reflect that Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions are the holders of these certificates. It is further

ORDERED that this Order shall serve as Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions' proof of certification. It is further

ORDERED that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, are waived in this instance for Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions. It is further

ORDERED that this Order shall become final and effective upon the issuance of a consummating order, unless persons whose substantial interests are affected by this proposed agency action files a protest within 21 days of the issuance this Order. It is further

ORDERED that these Dockets shall be closed administratively upon receipt of written notification from Comtel Telcom Assets LP that the transfer of assets is complete and upon receipt of payment of the 2005 and 2006 regulatory assessment fees (if applicable) by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. for both its CLEC and IXC operations. It is further

ORDERED that if VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. fail to pay their 2005 and 2006 regulatory assessment fees (if applicable), this matter shall be addressed by this Commission at a future Agenda Conference.

By ORDER of the Florida Public Service Commission this 19th day of December, 2005.

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 January 9, 2006.

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.