

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to asset purchase agreement between Adelphia Telecommunications, Inc. and Telecom Management, Inc. d/b/a Pioneer Telephone.

DOCKET NO. 050836-TI
ORDER NO. PSC-05-1245-PAA-TI
ISSUED: December 21, 2005

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING WAIVER 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

On October 24, 2005, Adelphia Telecommunications, Inc. (Adelphia) and Telecom Management, Inc. d/b/a Pioneer Telephone (Pioneer) submitted a request to us for waiver of carrier selection requirements of Rule 25-4.118, Florida Administrative Code, due to an intrastate interexchange company (IXC) asset purchase agreement between the companies.

Since June 25, 2002, Adelphia has been operating-under the protection of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The sale of the customers and assets of Adelphia pursuant to the Agreement has been approved by the Bankruptcy Court.

The Acquisition contemplates the following:

a. Pioneer will receive ownership, right, title and interest in and to substantially all of Adelphia's long distance telecommunications assets, including its customer accounts, as defined in the Agreement.

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b. The bankruptcy estate of Adelphia will receive the purchase price set forth in the Agreement, pursuant to an Order of the Bankruptcy Court approving the Agreement.

Pioneer proposes the Acquisition to consolidate the business and customer accounts of Adelphia with Pioneer in order to create a single, larger provider of telecommunications services, facilitating efficiencies to benefit all of Pioneer's and Adelphia's customers.

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

Discussion of Issues

The issue before us is whether to approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from Adelphia Telecommunications, Inc. to Telecom Management, Inc. d/b/a Pioneer Telephone?

In short, we approve the requested waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. 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 IXC's.

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.

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.

Pioneer 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. The customers should not experience any interruption of service, rate increase, or switching fees. In addition, Pioneer stated in its sample letter to customers that it will be responsible for any outstanding Adelphia complaints after the date of the transfer. Further, neither Adelphia nor Pioneer has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registrations.

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.

Therefore, we approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from Adelphia Telecommunications, Inc. to Telecom Management, Inc. d/b/a Pioneer Telephone.

In conclusion if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

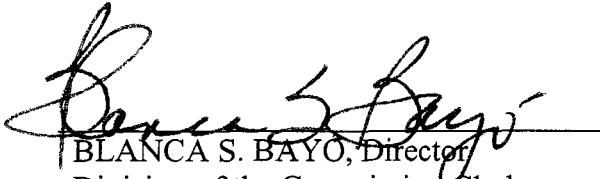
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from Adelphia Telecommunications, Inc. to Telecom Management, Inc. d/b/a Pioneer Telephone is hereby approved. 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 in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of December, 2005.


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 January 11, 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.