

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for waiver of carrier selection requirements of Rule 25-4.118, FAC, due to asset purchase agreement, whereby TTUSA Acquisition, Inc. will acquire assets of YesTel, Inc., including, but not limited to, YesTel's customer accounts in the State of Florida.

DOCKET NO. 060364-TI  
ORDER NO. PSC-06-0510-PAA-TI  
ISSUED: June 16, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION ORDER  
GRANTING RULE WAIVER OF 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.

**I. Case Background**

YesTel, Inc. (YesTel) and TTUSA Acquisition, Inc. (TTUSA) are both registered intrastate interexchange telecommunications companies (IXC) that provide interexchange telecommunications services in Florida. On May 1, 2006, our staff received a letter advising this Commission of an asset purchase agreement between YesTel and TTUSA, whereby TTUSA would acquire the assets and customer accounts of YesTel. The parties also requested a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code.

This waiver is being sought to provide this Commission notice of the transfer of assets for the treatment of customers in a consumer-friendly manner and allows for a transition to occur in a smooth process protecting both the consumer and the company. Without this waiver, TTUSA would be required to obtain signed letters of agency (LOAs) or third party verifications (TPVs) from each customer being transferred. With the waiver, TTUSA can protect itself from possible complaints of unauthorized carrier changes. This waiver is also beneficial to the customers as they will not be subject to a loss of service on the date of transfer.

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

## **II. Analysis**

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.

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.

TTUSA has attested that it will provide for a seamless transition while ensuring that the affected customers will continue to receive the same services and rates that the customers currently receive from YesTel. If any of YesTel's rates are not currently included in TTUSA's tariff, TTUSA will amend its tariff to include those rates. Our staff has reviewed the notice that will be sent to YesTel's customers and found it to be adequate. Currently YesTel has no outstanding customer complaints. If customer complaints are filed against YesTel and are not resolved prior to the transaction, TTUSA has stated that it will resolve all of the outstanding complaints.

Neither YesTel nor TTUSA have any outstanding regulatory assessment fees, penalties or interest associated with their IXC registrations.

**III. Decision**

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 long distance service. Furthermore, we find that granting this waiver will avoid unnecessary slamming complaints during this transition. We find it appropriate to approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from YesTel to TTUSA.


Based on the foregoing, it is

ORDERED by the Florida Public Service Commission the request for waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, be 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 that this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 16th day of June, 2006.

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

(SEAL)

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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 July 7, 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.