

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for cancellation of CLEC Certificate Nos. 8371 and 7804 by Acceris Management and Acquisition LLC and New Access Communications LLC, respectively, acknowledgment of cancellation of IXC Registration Nos. TK011 and TJ511 by Acceris Management and Acquisition LLC and New Access Communications LLC, respectively, effective March 1, 2007, and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to transfer of assets to First Communications, LLC.

DOCKET NO. 060781-TP  
ORDER NO. PSC-07-0133-PAA-TP  
ISSUED: February 16, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
MATTHEW M. CARTER II  
KATRINA J. McMURRIAN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING CANCELLATION OF CLEC CERTIFICATES  
AND IXC REGISTRATIONS, TRANSFER OF ASSETS  
AND GRANTING REQUEST FOR 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**

On December 7, 2006, Acceris Management and Acquisition LLC (AMA), New Access Communications LLC (NAC), and First Communications, LLC (FCL), each intrastate interexchange companies (IXCs) and competitive local exchange companies (CLECs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code.

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FCL is acquiring certain assets from AMA and NAC, including customer accounts and account receivables. FCL seeks the waiver so that it will not have to obtain each customer's authorization. With the waiver, FCL can protect itself from possible complaints of unauthorized carrier changes (slamming). Customers will benefit because they will not be subject to a loss of service during the transfer of assets.

At the conclusion of the transaction, AMA and NAC request voluntary cancellation of their respective IXC registrations and CLEC certificates. The cancellations are not addressed in this recommendation.

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

### **Analysis**

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 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.

FCL 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. Staff has reviewed the notice that will be sent to AMA's and NAC's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Staff is working directly with the companies to ensure that all regulatory assessment fees will be paid. Further, neither AMA, NAC nor FCL has any active customer complaints on file with the Commission. FCL will be responsible for resolving any complaints from customers it acquires from AMA and/or NAC upon assumption of the customers from either company.

We hereby find in this instance it is appropriate 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 services. Furthermore, our staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition. Therefore, we hereby approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Acceris Management and Acquisition LLC's and New Access Communications LLC's customers to First Communications, LLC.

### **Conclusion**

This Order shall become final and effective upon the issuance of the consummating order unless a person whose substantial interests are affected by this Commission's decision files a protest that identifies with specificity the issued in dispute in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the order. This docket should be closed upon the issuance of the consummating order.


Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Acceris Management and Acquisition LLC, New Access Communications LLC, and First Communications, LLC, each intrastate interexchange companies and competitive local exchange companies, joint requests for a waiver of the carrier selection requirements of Rule 25-4.118, 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 the consummating order unless a person whose substantial interests are affected by this Commission's decision files a protest that identifies with specificity the issued in dispute 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 that date set forth in the "Notice if Further Proceedings" attached Hereto. It is further

ORDERED that if this Order is not protested, it shall be closed within 21 days of the issuance of the order.

By ORDER of the Florida Public Service Commission this 16th day of February, 2007.

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

( S E A L )

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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 March 9, 2007.

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.