

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition of PAETEC Communications, Inc., holder of CLEC Certificate No. 5756 and IXC Registration No. TJ132, and US LEC of Florida Inc. d/b/a PAETEC Business Services, holder of CLEC Certificate No. 5311 and IXC Registration No. TJ057, for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to allow transfer of customers from US LEC to PAETEC due to intra-corporate merger of US LEC into PAETEC.

DOCKET NO. 070629-TP  
ORDER NO. PSC-07-0989-PAA-TP  
ISSUED: December 11, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
MATTHEW M. CARTER II  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER  
APPROVING JOINT PETITION TRANSFER OF CUSTOMERS  
ON CLEC CERTIFICATES AND IXC REGISTRATIONS 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.

**Case Background**

On September 27, 2007, PAETEC Communications, Inc. (PAETEC) and US LEC of Florida Inc. d/b/a PAETEC Business Services (US LEC), both competitive local exchange telecommunications companies (CLECs) and intrastate interexchange companies (IXCs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code.

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PAETEC is acquiring approximately 7,000 business customers currently served by US LEC. PAETEC seeks the waiver so it will not have to obtain each customer's authorization. With the waiver, PAETEC 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. At the end of the transaction, US LEC will request cancellation of its CLEC certificate and IXC registration.

We are vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, and 364.603, Florida Statutes. Accordingly, we believe the following are appropriate.

**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 this Commission is authorized to waive.

PAETEC 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. We have reviewed the notice that will be sent to US LEC's customers and found it to be adequate. The customers shall not experience any interruption of service, rate increase, or switching fees. In addition, PAETEC has agreed to resolve any customer complaints that arise from issues occurring prior to the transfer. As of the filing date of this recommendation, PAETEC has four open complaints and US LEC has one.

Further, neither PAETEC nor US LEC has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration or CLEC certification.

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

Therefore, we recommend that this Commission approves the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of US LEC of Florida Inc. d/b/a PAETEC Business Services' customers to PAETEC Communications, Inc.

### **Conclusion**

This Order shall become final and effective upon the issuance of a Consummating Order 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 shall be closed.

Based upon the forgoing, it is

ORDERED by the Florida Public Service Commission that joint petition of PAETEC Communications, Inc., (PAETEC) holder of CLEC Certificate No. 5756 and IXC TJ132 and US (US LEC) LEC of Florida Inc. d/b/a PAETEC Business Services, holder of CLEC Certificate No. 5311 and IXC TJ057 for waiver of carrier selection requirements of Rule 25-4.118 F.A.C of customer from US LEC to PAETEC be approved. It is further

ORDERED that this Order shall become final and effective upon the issuance of a Consummating Order 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 shall be closed.

By ORDER of the Florida Public Service Commission this 11th day of December, 2007.



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ANN COLE  
Commission Clerk

( S E A L )

VSM

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 1, 2008.

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.