

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., in transfer of long distance customers from Broadwing Communications, LLC to Telecom Management, Inc. d/b/a Pioneer Telephone, Inc.

DOCKET NO. 080542-TI
ORDER NO. PSC-08-0648-PAA-TI
ISSUED: October 6, 2008

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING BROADWING TELECOMMUNICATIONS, LLC AND TELECOM
MANAGEMENT, INC. D/B/A PIONEER TELEPHONE INC.'S JOINT PETITION FOR
WAIVER OF CARRIER SELECTION REQUIREMENTS AND TRANSFER OF
CUSTOMERS

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 July 18, 2008, Broadwing Communications, LLC (Broadwing) and Telecom Management, Inc. d/b/a Pioneer Telephone, Inc. (Pioneer), both intrastate interexchange telecommunications companies (IXCs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. The waiver will allow Broadwing to transfer small business and residential customers to Pioneer without requiring Pioneer to obtain authorization from each customer. Pioneer will acquire approximately 1,121 business and 1,100 residential, stand-alone toll customers from Broadwing. Upon grant of this request, Broadwing will retain its IXC registration with this Commission and will continue to provide toll service to customers that purchase local exchange and toll service bundles.

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FPSC-COMMISSION CLERK

This waiver is being sought to prevent Pioneer from having to obtain authorization from each customer being transferred by the company. Without this waiver, Pioneer would be required to obtain signed letters of agency (LOAs) or third party verifications (TPVs) from each customer being transferred. With the waiver, Pioneer 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.

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

II. Analysis

Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's telecommunications services provider 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.

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. Our staff reviewed the notice that will be sent to Broadwing's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Neither Pioneer nor Broadwing has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration. Our staff notes that Broadwing was late in paying its 2007 regulatory assessment fees for its IXC registration (Docket 080373-TI) and competitive local exchange certificate (Docket 080471-TX). Even though these two dockets are still active and are being administratively processed by our staff, Broadwing has paid all the outstanding penalties and fees.

As of the filing date of this recommendation, Broadwing has no active customer complaints on file with this Commission. Pioneer has one active customer complaint. Pioneer is actively working with our staff to resolve this complaint. After the customer transfer is complete, Pioneer will handle all customer complaints, including any complaints involving issues prior to the transfer.

We find that requiring Pioneer to obtain each customer's prior authorization in this event, may cause the customers to lose their long distance services should they fail to respond to a request for authorization or neglect to select another carrier. Furthermore, we believe that granting this waiver will avoid unnecessary slamming complaints during this transition.

III. Decision

Therefore, we find it appropriate to approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, permitting the transfer of long distance customers from Broadwing Communications, LLC to Telecom Management, Inc. d/b/a Pioneer Telephone, Inc. Any waiver approved by this Commission should only apply to customers identified by the petitioners as residential and small business customers. The petitioners should be required to provide this Commission notification of the actual dates when the transactions are consummated. If for any reason the transactions are not consummated, any waiver approved by this Commission shall be null and void.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request for waiver of the carrier selection requirements of Rule 25-4.1 18, of long distance customers from Broadwing Communications, LLC to Telecom Management, Inc. d/b/a Pioneer Telephone, Inc. be granted. 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 Office of Commission Clerk, 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 6th day of October, 2008.

ANN COLE
Commission Clerk

By: 

Hong Wang
Office of Commission Clerk

(S E A L)

TJB

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 October 27, 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.