

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for expedited waiver of carrier selection requirements of Rule 25-4.118, FAC, due a transaction in which Birch Telecom of the South, Inc. d/b/a Birch Telecom d/b/a Birch Communications, a wholly owned subsidiary of Birch Communications, Inc., will acquire substantially all of the assets and customers of Cleartel Telecommunications, Inc. d/b/a Now Communications, also d/b/a VeraNet Solutions, IDS Telcom Corp. d/b/a Cleartel Communications, nii communications, ltd., and Supra Telecommunications and Information Systems, Inc.

DOCKET NO. 090307-TP
ORDER NO. PSC-09-0496-PAA-TP
ISSUED: July 13, 2009

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 REQUEST FOR EXPEDITED WAIVER
OF CARRIER SELECTION REQUIREMENTS

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. Background

On May 8, 2009, Birch Telecom of the South, Inc. d/b/a Birch Telecom d/b/a Birch Communications (Birch), a competitive local exchange telecommunications company (CLEC) and intrastate interexchange company (IXC), submitted a request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code (F.A.C.), for the transfer

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of all local and long distance customers from four companies¹ (collectively, "Sellers") to Birch. At the conclusion of the transaction, the Sellers will request cancellation of their respective CLEC certificates and IXC registrations in a separate action.

Birch is acquiring approximately 38,600 business and residential customers currently served by the Sellers. Birch seeks the waiver so it will not have to obtain each customer's authorization. With the waiver, Birch can protect itself from possible complaints of unauthorized carrier changes. Customers will benefit because they will not be subject to a loss of service during the transfer.

We are vested with jurisdiction in this matter pursuant to Sections 364.02, 364.335, 364.336, 364.337, 364.345, and 364.603, Florida Statutes. Accordingly, we find the following actions are appropriate.

II. Analysis

Pursuant to Rule 25-4.118(1), F.A.C., a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), F.A.C., provides in pertinent part 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), F.A.C., Rule 25-4.118, F.A.C., is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(2), F.A.C., provides that an IXC may petition for a waiver of any provision of the rules governing IXCs. We may grant in whole, grant in part, or deny the petition for waiver based on the following:

- The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived;
- Alternative regulatory requirements for the company which may serve the purposes of this part; and
- The extent to which a waiver would serve the public interest.

¹ **Cleartel Telecommunications, Inc. d/b/a Now Communications, also d/b/a VeraNet Solutions** (Cleartel), holder of CLEC certificate no. 8326 and IXC registration no. TJ777;
IDS Telecom Corp. d/b/a Cleartel Communications (IDS), holder of CLEC certificate no. 5228 and IXC registration no. TJ987;
nii Communications, Ltd. (nii), holder of CLEC certificate no. 7759 and IXC registration no. TJ510; and
Supra Telecommunications and Information Systems, Inc. (Supra), holder of CLEC certificate no. 4861 and IXC registration no. TK091.

Pursuant to Rule 25-24.845, F.A.C., Rule 25-4.118, F.A.C., 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, F.A.C., is found in Section 364.603, Florida Statutes, which is a section we are authorized to waive.

Birch 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 notices that will be sent to the Sellers' customers and found them to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

As of June 18, 2009, Birch had two outstanding complaints, Cleartel had three, IDS had one, Supra has 13, and nii had none. All of the companies are actively working with us to resolve these complaints. After the transaction is consummated, the Sellers provided a single contact to work with staff to resolve any customer complaints that arise from issues occurring prior to the transfer.

Further, neither Birch, Cleartel, IDS, nii nor Supra has any outstanding regulatory assessment fees, penalties or interest associated with its respective IXC registration or CLEC certification.

We find that in this instance it is appropriate to waive the carrier selection requirements of Rule 25-4.118, F.A.C. 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 find that granting this waiver will avoid unnecessary slamming complaints during this transition.

III. Decision

Therefore, we approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. Any waiver approved by this Commission shall only apply to the specific set of customers identified in the petition. The petitioners shall be required to provide us notification of the actual date when the transaction is consummated. If for any reason the transaction is not consummated, any waiver approved by this Commission shall be null and void.

Therefore, it is

ORDERED by the Florida Public Service Commission that we approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. Any waiver approved by this Commission shall only apply to the specific set of customers identified in the petition. It is further

ORDERED that the petitioners shall be required to provide this Commission notification of the actual date when the transaction is consummated. If for any reason the transaction is not consummated, any waiver approved by this Commission shall be null and void. It is further

ORDERED that 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.

By ORDER of the Florida Public Service Commission this 13th day of July, 2009.



ANN COLE
Commission Clerk

(SEAL)

JLM

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.

ORDER NO. PSC-09-0496-PAA-TP
DOCKET NO. 090307-TP
PAGE 5

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 August 3, 2009.

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.