

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of Rule 25-4.118, F.A.C., to allow CIMCO Communications, Inc. to transfer certain assets and customer base to Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone.

DOCKET NO. 090470-TI
ORDER NO. PSC-09-0791-PAA-TI
ISSUED: November 30, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
NANCY ARGENZIANO
NATHAN A. SKOP
DAVID E. KLEMENT

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING 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. Case Background

On October 7, 2009, CIMCO Communications, Inc. (CIMCO) and Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone (Comcast), both intrastate interexchange companies (IXCs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code (F.A.C.). The waiver allows CIMCO to transfer its customer accounts to Comcast without obtaining each customer's authorization. Approximately 31 business customers are being transferred. CIMCO will not retain its IXC registration with the Commission. However, CIMCO did not request cancellation in the instant petition, but stated it would seek cancellation separately.

This waiver is being sought to provide notice of the transfer of assets, for the treatment of customers in a consumer-friendly manner, and to allow for the transition to occur in a smooth process protecting both the consumers and the company. Without this waiver, Comcast would be required to obtain signed letters of agency (LOAs) or third party verifications (TPVs) from each customer being transferred. With the waiver, Comcast can protect itself from possible complaints of unauthorized carrier changes. This waiver is also beneficial to the customers as

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they will not be subject to a loss of service on the date of transfer. Thus, this proposed agency action order addresses the request for waiver of Rule 25-4.118, F.A.C., for intrastate interexchange telecommunications services.

We are vested with jurisdiction in this matter pursuant to Sections 364.02(14)(g) and 364.603, Florida Statutes (F.S.). 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 IXC's.

Rule 25-24.455(2), F.A.C., provides that an IXC may petition for a waiver of any provision of the rules governing IXC's. We can 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.

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

Neither CIMCO nor Comcast has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration. As of the October 29, 2009, neither Comcast nor CIMCO had any active customer complaints. CIMCO provided a toll-free number in its notification letter for its customers' use for complaints related to issues occurring before the transfer.

III. Decision

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

Therefore, we approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C., in the transfer of CIMCO Communications, Inc.'s customers to Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that CIMCO Communications, Inc.'s and Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone's joint request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. is approved. This waiver only applies to the specific set of customers identified in the petition. It is further

ORDERED that the petitioners are required to provide the 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 administratively.

By ORDER of the Florida Public Service Commission this 30th day of November, 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.

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 December 21, 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.