

State of Florida



Public Service Commission

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COMMISSION
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DATE: JANUARY 10, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF REGULATORY OVERSIGHT (T. MCCOY) *sm*
DIVISION OF LEGAL SERVICES (J. ELLIOTT) *JAE BIC*

RE: DOCKET NO. 011192-TI - PETITION BY UNIVANCE
TELECOMMUNICATIONS, INC. FOR WAIVER OF RULE 25-4.118,
F.A.C., INTEREXCHANGE CARRIER SELECTION, FOR PURCHASE OF
CUSTOMER BASE OF INTERCONTINENTAL COMMUNICATIONS GROUP,
INC. D/B/A FUSION TELECOM.

AGENDA: 01/22/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\011192.RCM

CASE BACKGROUND

On September 10, 2001, this Commission received a petition seeking a waiver of the interexchange carrier selection requirements of Rule 25-4.118, Florida Administrative Code, from Univance Telecommunications, Inc. (Univance). Univance is a certificated interexchange carrier (IXC), Certificate No. 4844, operating in Florida. The company informed the Commission that they had agreed to purchase the long distance voice customers of Intercontinental Communications Group, Inc. d/b/a Fusion Telecom (Fusion), a certificated interexchange carrier (IXC), Certificate No. 4027 operating in Florida. Intercontinental Communications Group, Inc. also does business in Florida as d/b/a Fusion - Trucker and d/b/a Call-4-Less with customer bases that will remain intact.

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FPSC-COMMISSION CLERK

The basis for seeking a waiver is set forth in Rule 25-24.455(4), Florida Administrative Code. The Commission may consider whether the petition is in the public interest, whether market forces obviate the need for the provision in a particular instance, and whether reasonable alternative regulatory methods may serve the same purpose. Because Rule 25-24.490, Florida Administrative Code, incorporates Rule 25-4.118, Florida Administrative Code, into the Commission's IXC rules, the waiver provisions of Rule 25-24.455(4) are applicable to petitions for waiver of Rule 25-4.118, Florida Administrative Code, as it applies to IXCs.

The petition states that during the week of August 15, 2001, Univance sent out a letter to all affected Fusion long distance voice customers explaining the transfer and assuring them that the quality of service and rates they received with Fusion will continue with Univance. The affected Fusion customers were also reminded that they are under no obligation to take service from Univance, and that they are free to select another company to transmit their long distance calls. (Attachment A) Univance also sent a "Welcome" letter to reassure customers that there would be no interruption of service, and provided a toll free number dedicated to Fusion customers for any inquiries, concerns, and trouble reporting. (Attachment B) The petition states that the company expected the transfer of the customers from Fusion to Univance to be complete on or before September 15, 2001.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.01, 364.337 and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should Univance be relieved in this instance of the interexchange carrier selection requirements of Rule 25-4.118, Florida Administrative Code?

RECOMMENDATION: Yes. Staff believes a waiver of Rule 25.4.118, Florida Administrative Code, should be granted. **(McCoy)**

STAFF ANALYSIS:

Pursuant to Rule 25-4.118(1), Florida Administrative Code, the provider of a customer shall not be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that an IXC shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service;
- (c) A third party firm has verified the customer's requested change.

Rule 25-24.455(4), Florida Administrative Code, states as follows:

An interexchange company may petition for a waiver of any provision of this Part. The Commission may grant a waiver to the extent that it determines that it is consistent with the public interest to do so. The Commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission may consider:

- (a) The factors enumerated in Section 364.337(2), FL. Statutes; [Now found in Section 364.337(4), F.S., 1999.]
- (b) The extent to which competitive forces may serve the

same function as, or obviate the necessity for, the provision sought to be waived; and

(c) Alternative regulatory requirements for the company which may serve the purposes of this Part.

Pursuant to Rule 25-24.490, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs. Thus, the waiver provisions of Rule 25-24.455(4), Florida Administrative Code, are applicable to Rule 25-4.118, Florida Administrative Code, as it applies to IXCs

Staff is concerned that the Petitioner apparently notified the affected Fusion customers via a letter that was not prior approved by the Commission. By mailing the letter to affected customers prior to gaining Commission approval, staff was unable to ensure that the letter served as an adequate substitute for the protections afforded customers against unauthorized carrier changes by Rule 25-4.118, Florida Administrative Code. Staff has reviewed the attached notices mailed to Fusion's customer base and found they did meet past Commission approved noticing requirements for similarly approved customer base carrier change notifications. However, upon reviewing the notice, staff had concerns with the following statements contained in the notice: (1) "Subscribers under a term contract may face termination penalties if the subscriber selects another carrier prior to expiration of the term contract;" (2) "Univance will not be responsible for resolving outstanding complaints against Fusion, call us at (800) 831-2308 if you have any questions, or visit us at www.univance.com."

Staff contacted Univance and the company explained, that although there is a statement in the notice regarding termination penalties for customers under term contracts for selecting another carrier prior to expiration of the term contract, there were in fact, no customers transferred that had term contracts. Therefore, the penalty discussed in the notice did not have an actual affect on anyone involved in the customer base transfer. Staff also addressed the concern regarding the management of any outstanding Fusion customer complaints. Univance stated that to its knowledge there were no outstanding customer complaints prior to the transfer of Fusion's customer base. Staff went a step further and researched the Commission's internal Consumer Affairs complaints database and found no unresolved complaints on file at the Commission.

Staff understands that the dynamics of such business relationships can involve some level of uncertainty such that the companies may not provide adequate time for prior Commission notification and approval before finalizing negotiations related to customer base transfer transactions. The number of petitions for waiver of Rule 25-4.118, Florida Administrative Code, filed with the Commission to date is still small, but continues to grow. The Commission has previously approved requests for waiver of Rule 25-4.118, Florida Administrative Code, that were filed after the affected customers had been notified. Most such petitions, though, have requested Commission approval of the notification letters and appear to have been filed prior to the notification letters being sent to the affected customers as is the case with this Petitioner. However, the transfer of the customer base was scheduled to occur the same week the Petitioner notified the Commission that the business transaction was to occur and prior Commission approval could not be obtained to accommodate the companies preestablished time frames for this particular business transaction.

Staff does not intend to recommend that the Commission unnecessarily impede business transactions among telecommunications providers in Florida. However, requesting a waiver of a rule under the Commission's jurisdiction after the company appears to have violated the rule, or at such a time that it will have violated the rule prior to issuance of the Consummating Order, appears to be improper and displays as unacceptable disregard for the authority of the Commission. Staff believes that, in the future, when companies intend to purchase or transfer customer bases, they should either file a timely petition for waiver of Rule 25-4.118, Florida Administrative Code, or obtain a signed letter of Agency from each affected customer prior to switching the respective customer's service. Failure to timely take one of these actions could possibly result in a penalty for apparent unauthorized carrier changes of the affected customers and the issuance of credit to the affected customer's account in accordance with Rule 25-4.118(8), Florida Administrative Code.

Staff notes by Order No. PSC-02-0017-PAA-TI, issued on January 3, 2002, in Docket No. 011366-TI, the Commission addressed a similar situation and emphasized the same concern regarding the timing of the Petition for Waiver. While the Commission did indicate therein that if future petitions for waiver were not timely filed, the companies could be at risk for penalties, due to the proximity of the filing in this Docket, Docket No. 011192-TI,

and the filing in Docket No. 011366-TI, staff believes that Univance's Petition for Waiver should be granted. Staff believes that in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. The companies provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. The customers received ample notification of the transfer and had the opportunity not to participate. If prior authorization had been sought from the affected customers in accordance with Rule 25-4.118, Florida Administrative Code, customers may have failed to respond to the request for authorization, or neglected to select another carrier, thereby losing their long distance service.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on Issue 1, then the Proposed Agency Action Order shall become final and effective upon the issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of this Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of the issuance of the Order, this docket should be closed administratively upon issuance of the Consummating Order. **(Elliott)**

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

COPY

August 15, 2001

LEGAL NOTICE

This notice serves to inform you that Univance Telecommunications, Inc. ("Univance") is acquiring the long distance voice customer base of Intercontinental Communications Group, Inc. d/b/a Fusion Telecom ("Fusion"). The acquisition is expected to be completed by August 15, 2001 and Univance will become your long distance service provider on September 15, 2001. Pursuant to an agreement, Fusion's voice customers and customer accounts have been assigned to and assumed by Univance.

The proposed transition to Univance will be seamless; Univance will pay all carrier charges associated with the transfer and you should not experience an interruption in service. As a Univance customer, you will continue to receive services at the same terms, conditions and low rates that you enjoy today. You will be notified in writing, in advance, of any post-transfer changes. While you have a right to select another carrier to provide your long distance, Univance is committed to satisfying your communication needs and will ensure that you are provided first-rate, affordable telecommunication services. Subscribers under a term contract may face termination penalties if the subscriber selects another carrier prior to expiration of the term contract. All subscribers receiving this notice, including those who have arranged preferred carrier freezes through their local service providers, will be transferred to Univance if they do not select a different preferred carrier before the transfer date. Existing preferred carrier freezes on the service(s) involved in the transfer will be lifted, and the subscriber must contact its local service provider to arrange a new freeze. Although Univance will not be responsible for resolving outstanding complaints against Fusion, call us at (800) 813-2308 if you have any questions, or visit us at www.univance.com.

UNIVANCE

Telecommunications
With A Higher Priority™

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August 15, 2001

Mr. Fusion Customer

Welcome to Univance! I am pleased to announce that Univance Telecommunications, Inc. has purchased the long distance customer base of Intercontinental Communications, Group, Inc. d/b/a Fusion Telecom. This purchase was a strategic decision on Univance's behalf as it strongly complements our current and future business direction to provide affordable long distance services with the highest degree of customer service. I would like to personally assure you, as our new customer, that Univance is committed to making your communications priorities our highest priority.

Univance, incorporated in 1993 and headquartered in Englewood, Colorado, is a leading provider of advanced telecommunications solutions. Recognized as one of Colorado's fastest-growing privately held companies and one of the state's largest minority-owned businesses, Univance is expanding its business plan to become a global internet telephony service provider to offer business and mass markets more advanced and market-oriented applications through the deployment of a high-end, scalable IP transport network.

As a result of the Fusion customer base acquisition, your domestic and international long distance and conference calling communications service provider will now be Univance Telecommunications. The transition of your services will be seamless and you will be contacted in the near future by a Univance representative to best determine the right communications suite of products and services that will best accommodate your needs.

Included in this mailing, please find a notice describing the ownership changes associated with Univance's purchase of the Fusion customer base. Univance is required by the Federal Communications Commission to provide you with certain information and your rights as a consumer. We have set up a customer service toll free number specifically for our new customers. Please do not hesitate to contact us at the designated number listed below should you have any questions or concerns about your service or accounts moving forward.

Once again, on behalf of all the employees, executive management team and our Board of Directors, I welcome you to Univance. We look forward to sharing more of our business and product development plans with you in the near future.

Sincerely,



Ray B. Ramirez
CEO and President
Univance Telecommunications, Inc.

**DEDICATED FUSION CUSTOMER SERVICE NUMBER FOR ALL INQUIRIES, CONCERNS AND
TROUBLE REPORTING: 800-813-2308**

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