



Public Service Commission
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COMMISSION CLERK

DATE: JANUARY 10, 2002

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

FROM: DIVISION OF REGULATORY OVERSIGHT (HAWKINS) *BHSS*
DIVISION OF LEGAL SERVICES (BANKS) *PERB DL* *[Signature]*

RE: DOCKET NO. 011675-TI - JOINT PETITION FOR WAIVER OF RULE
25-4.118, F.A.C., INTEREXCHANGE CARRIER SELECTION, FOR
TRANSFER OF CUSTOMER BASE FROM ADELPHIA BUSINESS SOLUTIONS
OF JACKSONVILLE, INC. AND ADELPHIA BUSINESS SOLUTIONS
INVESTMENT, LLC TO ESSEX COMMUNICATIONS, INC. D/B/A ELEC
COMMUNICATIONS.

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\RG0\WP\011675.RCM

CASE BACKGROUND

On December 27, 2001, this Commission received a petition seeking a waiver of the interexchange carrier selection requirements of Rule 25-4.118, Florida Administrative Code, from Adelphia Business Solutions of Jacksonville, Inc. ("Adelphia") and Adelphia Business Solutions Investment, LLC ("Adelphia") and Essex Communications, Inc. ("Essex") d/b/a eLEC Communications ("eLEC"). Adelphia and Essex informed the Commission that they will be transferring their resale customer base from Adelphia to eLEC.

Adelphia Business Solutions of Jacksonville, Inc. is holder of Interexchange Telecommunications (IXC) certificate No. 7375 and and Alternative Access Vendor (AAV) certificate No. 2973 in Florida; Adelphia Business Solutions Investment, LLC is holder of

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FPSC-COMMISSION CLERK

DOCKET NO. 011675-TI
DATE: JANUARY 10, 2002

Alternative Local Exchange (ALEC) certificate No. 6056 and IXC certificate No. 6055 in Florida and Essex is holder of ALEC certificate No. 7103 and IXC certificate No. 7556 in Florida.

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 believe the need for the provision in a particular instance, and whether reasonable alternative regulatory methods may serve the same purpose. Rule 25-24.490, Florida Administrative Code, makes this waiver provision applicable by incorporating Rule 25-4.118, Florida Administrative Code, under Chapter 25-24, Florida Administrative Code.

On December 27, 2001, Adelphia and Essex filed a petition with the Commission seeking a waiver of Rule 25-4.118, Florida Administrative Code. Upon approval of this waiver, the petitioners propose to transfer the resale customer base of Adelphia to eLEC. Adelphia provides local exchange services, intraLATA toll service, high speed internet access and long distance telephone service. eLEC is a full service telecommunications company that provides local exchange and long distance service.

Initially, Adelphia entered most of its Florida markets on a resale basis with the intent to migrate its customers to its facilities-based services as its network was constructed in Florida. For various reasons, in some areas where it provides resale services, Adelphia will not be able to complete its network in the near future. Therefore, Adelphia proposes to assign its resale customers to eLEC in order to focus on its facilities-based end users and the conversion of its other resale customers to facilities-based subscribers where it currently has facilities.

Adelphia has informed the Commission staff that notification regarding these changes will be sent to all affected customers. **(ATTACHMENT A)** The initial notification will advise the customers of the following: 1) the pending change of their carrier selection to eLEC, the rates, terms and conditions of the service(s) to be provided by the acquiring carrier; 2) there will be no charges associated with the change and services will be provided; 3) the subscribers right to select a different preferred carrier, if an alternative carrier is available; 4) a toll-free customer service telephone number for inquiries about the transfer; 5) all subscribers receiving a notice, including those who have arranged

preferred carrier freezes through their local service providers, will be transferred if they do not select a different preferred carrier before the transfer date and 6) that the acquiring carrier will be responsible outstanding complaints against the selling or transferring carrier.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.01, 364.337 and 364.603, Florida Statutes.

DISCUSSION OF ISSUES

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

RECOMMENDATION: Yes. Staff agrees that Adelphia should be relieved in this instance of the interexchange carrier selection requirement of Rule 25-4.118, Florida Administrative Code. **(HAWKINS)**

STAFF ANALYSIS: Pursuant to Rule 25-4.118(1), Florida Administrative Code, the provider of a customer shall not be changed without the customers 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 the following:

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

DOCKET NO. 011675-TI
DATE: JANUARY 10, 2002

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. As such, the waiver provisions of Rule 25-24.455 are applicable to Rule 25-4.118 as it applies to IXCs.

Staff believes that in this instance it is in the public interest to waive the carrier selection requirements of Rule 15-4.118, Florida Administrative Code. The companies provided for a transparent transition while insuring that the affected customers understand available with the least amount of disruption to the customers. The customers will receive ample notification of the transfer and will have the opportunity to decide whether or not to participate. 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 service. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming customer accounts. The Commission has previously granted identical requests in Docket Nos. 000364-TI and 011400-TI.

Staff recommends that the interexchange carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived for the transfer of Adelphia's resale customer base to eLEC.

DOCKET NO. 011675-TI
DATE: JANUARY 10, 2002

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon 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 the Proposed Agency Action order. **(BANKS)**

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.



DRAFT

Dear Customer,

Adelphia Business Solutions is pleased to announce a wide-ranging Agreement it has reached with eLEC Communications. As a part of the Agreement, effective February 22nd 2002, all services which have been provided by Adelphia will be billed and serviced by eLEC.

The reason for this transfer relates to Adelphia's decision to focus on other portions of its operations. This Agreement will ensure that Adelphia's customers continue to receive all features and services, at the same terms, conditions and rates. Adelphia will continue to be responsible for resolving any complaints received prior to the transfer and can be contacted at 877-279-3900.

eLEC Communications is a total telecommunications service provider licensed to provide telephone service in over forty states. eLEC offers a full line of telecommunications products, including local, long distance, calling card, voice mail, and Internet services. With over 51,000 customer lines in service, eLEC is well suited to meet your telecommunications needs.

Please be assured that your service will not be interrupted and that eLEC will be responsible for any charges associated with this transfer. As always, you have the right to select another local exchange carrier and may do so prior to the transfer date. If you have a preferred carrier freeze on your account and have not made an alternate carrier selection prior to the transfer date, you will be migrated to eLEC and will continue to enjoy the same services previously received from Adelphia.

eLEC looks forward to servicing your telecommunications needs of the future. Of course, if you have any questions regarding this information or eLEC services, please contact eLEC at 1- 888-389-1400.

Paul Riss
CEO
eLEC Communications

Brennan Asplen, Jr.
Director of Business Operations
Adelphia Business Solutions