

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 011192-TI
ORDER NO. PSC-02-0169-PAA-TI
ISSUED: February 6, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING UNIVANCE TELECOMMUNICATIONS, INC.'S PETITION FOR
WAIVER OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE

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.

BACKGROUND

On September 10, 2001, we 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 company (IXC), Certificate No. 4844, operating in
Florida. The Petitioner agreed to purchase the customer base of
Intercontinental Communications Group, Inc. d/b/a Fusion Telecom
(Fusion), a certificated interexchange carrier (IXC), Certificate

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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.

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. 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. 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.

We are vested with jurisdiction over these matters pursuant to Sections 364.01, 364.337 and 364.603, Florida Statutes.

WAIVER OF RULE 25.4.118, FLORIDA ADMINISTRATIVE CODE

Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's service provider 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: (1) The provider has a letter of agency from the customer requesting the change; (2) The provider has received a customer-initiated call for service; or (3) A third party firm has verified the customer's requested change.

The basis for seeking a waiver of Rule 25-4.118 (2), Florida Administrative Code, is set forth in Rule 25-24.455 (4), Florida Administrative Code, which 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), Fla. Statutes; [Now found in Section 364.337(4), F.S., 2001.]

(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.

We are 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. Our staff has reviewed the 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, our 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."

Our 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. Our 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. Our staff went a step further and researched our internal Consumer Affairs complaints database and found no unresolved complaints on file with this Commission.

We understand 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. Although Univance sought our approval, 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.

We do not intend to unnecessarily impede business transactions among telecommunications providers in Florida. However, requesting a waiver of a rule under our 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 an unacceptable disregard for the authority of this Commission. We believe 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

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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.

We note that by Order No. PSC-02-0017-PAA-TI, issued on January 3, 2002, in Docket No. 011366-TI, we addressed a similar situation and emphasized the same concern regarding the timing of the Petition for Waiver. While we did indicate in Order No. PSC-02-0017-PAA-TI 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, we find that Univance's Petition for Waiver should be granted. We believe 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. Therefore Univance's Petition for Waiver of Rule 25-4.118, Florida Administrative Code, shall be granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Univance Telecommunications, Inc.'s Petition for a Waiver of Rule 25-4.118, Florida Administrative Code, for the purpose of facilitating the purchase of the customer base of Intercontinental Communications Group, Inc. d/b/a Fusion Telecom is hereby granted. It is further

ORDERED that this Order shall become final and effective upon the issuance of a Consummating Order unless a person whose substantial interests are affected files a protest within 21 days of the date of issuance of this Order as set forth below in the "Notice of Further Proceedings or Judicial Review." It is further

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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 February, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

JAE

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.

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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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 27, 2002.

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 docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.