



Public Service Commission
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DATE: FEBRUARY 21, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (HAWKINS) *HH*
OFFICE OF THE GENERAL COUNSEL (DODSON) *RD*

RE: DOCKET NO. 020042-TP - JOINT PETITION FOR WAIVER OF RULE
25-4.118, F.A.C., TO APPROVE ACQUISITION BY WESTON
TELECOMMUNICATIONS, LLC OF CERTAIN ASSETS OF EASTON
TELECOM SERVICES, INC. (HOLDER OF IXC CERTIFICATE NO. 3989
AND ALEC CERTIFICATE NO. 5187.)

AGENDA: 03/05/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020042.RCM

CASE BACKGROUND

On January 11, 2002, this Commission received a petition seeking a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, to approve acquisition by Weston Telecommunications, LLC ("Weston") of certain assets of Easton Telecom Services, Inc. ("Easton"), including but not limited to, subscriber base and accounts receivable. Weston and Easton informed the Commission that they have both agreed to the acquisition of certain assets which includes Easton's subscriber base.

Easton is holder of Interexchange Telecommunications (IXC) Certificate No. 3989 and Alternative Local Exchange (ALEC) Certificate No. 5187. Staff notes that Weston's application to provide interexchange service, Docket No. 011655-TI, is also being considered at the March 5, 2002 Agenda Conference.

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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 dictate that there's a 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.

Easton provides domestic interstate and international telecommunications service and has the authority to provide intrastate interexchange service in 48 states, along with local authority in 30 states, including Florida.

Upon Commission approval of this waiver, Weston and Easton have informed staff that notification regarding these changes will be sent to all affected customers. (ATTACHMENT A) The notification will advise the customers of the following: 1) Weston has no plans to change the rates, terms and conditions of services currently provided; 2) no charges or fees will be imposed as a result of this transfer; 3) Weston will provide at least 30 days' prior notice of any changes to these rates, terms and conditions; 4) a customer has the right to choose a long distance provider and is free to choose another carrier to supply the services currently provided, if an alternative carrier is available; 5) all subscribers will be transferred to Weston, unless they request another carrier, and 6) subscribers with a PIC freeze on their account will be allowed to contact the LEC to arrange for a new freeze.

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 Weston be relieved in this instance of the carrier selection requirement of Rule 25-4.118, Florida Administrative Code?

RECOMMENDATION: Yes. Staff agrees that Weston should be relieved in this instance of the 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 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 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 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(4), FL. Statutes;
- (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 25-24.445 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 25-4.118, Florida Administrative Code. This transaction between Weston and Easton will be transparent to subscribers, thereby causing no disruption in service. The customers will receive ample notification of the transfer and will have the opportunity to decide whether or not they wish to maintain their already established service or choose another carrier. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming of customer accounts. The Commission has previously granted identical requests in Docket Nos. 00364-TI, 011400-TI and 011675-TI.

Staff recommends that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived for the acquisition by Weston of certain Easton assets, including Easton's subscriber base.

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. **(DODSON)**

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.