



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

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MARCH 21 AM 11:18
COMMISSION CLERK

DATE: MARCH 21, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (HAWKINS) & OFFICE OF THE GENERAL COUNSEL (BANKS, F.) *FRB BIC*

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: 04/02/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\011675.RCM

CASE BACKGROUND

The above docket was initiated pursuant to a request for waiver of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection for transfer of customer base filed jointly by Adelphia Business Solutions of Jacksonville, Inc., Adelphia Business Solutions Investment, LLC ("Adelphia") and Essex Communications, Inc. d/b/a eLEC Communications ("eLEC") on December 27, 2001.

By Order No. PSC-02-0183-PAA-TI, issued February 11, 2002, the Commission approved the joint waiver of Rule 25-4.118, Florida Administrative Code. (ATTACHMENT A)

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DOCKET NO. 011675-TI
DATE: March 21, 2002

By letter dated February 12, 2002, staff was notified by Maria A. Abbagnaro, Regulatory Counsel for eLEC Communications, that the transfer scheduled for February 21, 2002, did not and will not take place. (ATTACHMENT B) Staff notes that none of the potentially affected customers received notice of the planned transfer. Therefore, staff is requesting that Order No. PSC-02-0183-PAA-TI be vacated.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.335, 364.337, and 364.345, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Order No. PSC-02-0183-PAA-TI, issued February 11, 2002, be vacated?

RECOMMENDATION: Yes. The Commission should vacate Order No. PSC-02-0183-PAA-TI, issued February 11, 2002, granting the joint waiver of Rule 25-4.118, Florida Administrative Code. **(HAWKINS)**

STAFF ANALYSIS: Staff believes that since the transaction has not been consummated, Adelphia will continue to operate under its certificates. Therefore, staff recommends that Order No. PSC-02-0183-PAA-TI issued February 11, 2002 be vacated.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed upon issuance of the Commission's Order to vacate Order No. PSC-02-0183-PAA-TI issued February 11, 2002. **(BANKS)**

DOCKET NO. 011675-TI

DATE: March 21, 2002

STAFF ANALYSIS: This docket should be closed upon issuance of the Commission's Order to vacate Order No. PSC-02-0183-PAA-TI, issued February 11, 2002.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 011675-TI
ORDER NO. PSC-02-0183-PAA-TI
ISSUED: February 11, 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 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 December 27, 2001, we received a joint 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

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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 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. In our consideration of this waiver, we 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.

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Adelphia has informed our staff that notification regarding these changes will be sent to all affected customers. 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.

We are vested with jurisdiction in this matter pursuant to Sections 364.01, 364.337 and 364.603, Florida Statutes.

RULE WAIVER

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 Commission may grant the petition in whole or part, may

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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.

We find 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 have 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 will receive ample notification of the transfer and have the opportunity 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, this waiver will prevent unnecessary slamming complaints during this transition.

Accordingly, the interexchange carrier selection requirements in Rule 25-4.118, Florida Administrative Code, are hereby waived for the transfer of Adelphia's resale customer base to eLEC. This docket shall be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by this Commission's decision files a protest within 21 days of the issuance of the proposed agency action order.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Petition by Adelphia Business Solutions of Jacksonville,

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Inc., Adelphia Business Solutions Investment, LLC, and Essex Communications, Inc. d/b/a eLEC Communications for waiver of Rule 25-4.118, Florida Administrative Code, for the transfer of Adelphia Business Solutions of Jacksonville, Inc., and Adelphia Business Solutions Investment, LLC's resale customer base to Essex Communications, Inc. d/b/a eLEC Communications, is hereby granted as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is 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 the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 11th day of February, 2002.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

FRB

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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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 4, 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/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.



Maria A. Abbagnaro, Esq.
Director of Regulatory Affairs
Tel.: (203) 229-2402
Fax: (413) 521-4592
mabbagnaro@elec-corp.com

February 12, 2002

Ms. Blanca Bayó, Director
Division of Commission of Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

011675-TI


Dear Ms. Bayó:

Enclosed for filing are an original and seven (7) copies of the Motion for Withdrawal of Joint Petition of Essex Communications, Inc. d/b/a eLEC Communications ("eLEC") and Adelpia Business Solutions of Jacksonville, Inc and Adelpia Business Solutions Investment, LLC (collectively referred to as "Adelpia") for Waiver of Slamming Rule, Chapter 25-4.118 with respect to the transfer of Adelpia's resold local services customer basis.

Please note that although the anticipated transfer date was February 21, 2001, none of the customer subscriber notice letters were sent to potentially affected customers as the Parties were awaiting Commission approval before going forward. Therefore, the customers remain unaffected by this withdrawal. Please note that the anticipated transfer date is February 21, 2001.

Kindly direct any inquiries regarding this filing to my attention at (203) 229-2402.

Sincerely,



Maria A. Abbagnaro

Spoke w/ Maria.
Year should be
2002!

Enc.

DOCUMENT NUMBER DATE

01689 FEB 13 2002

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of	:	Docket No.:
Essex Communications, Inc.	:	Filed:
d/b/a eLEC Communications and	:	
Adelphia Business Solutions of	:	
Jacksonville, Inc. and Adelphia	:	
Business Solutions Investment, LLC	:	
For Waiver of Slamming Rule,	:	
Chapter 25-4.118	:	

MOTION FOR WITHDRAWAL OF JOINT PETITION

Adelphia Business Solutions Operations, Inc. ("Adelphia") and Essex Communications, Inc. d/b/a eLEC Communications ("eLEC") respectfully request that the Commission permit the withdrawal of its Joint Petition For Approval of Proposed Transfer of Customer Base and Waiver of Slamming Rules ("Joint Petition") which was filed on December 27, 2001.

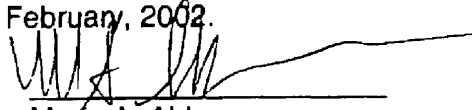
Adelphia and eLEC (the "Parties") do not intend to go forward with the anticipated partial migration of Adelphia's resale customer base to eLEC. The Commission issued its Notice of Proposed Agency Action Order Granting Waiver of Rule 25-4.118, Florida Administrative Code on February 11, 2002. The Parties were awaiting Commission approval of the subscriber notification letter prior to notifying Adelphia's affected customers. Therefore, none of the potentially affected customers have received notice of the impending transfer. Further, the parties have complied with 47 CFR 64.1120(e)(2) which requires written notice of any material changes to a transfer of subscriber base to the Federal Communications Commission.

ATTACHMENT B
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WHEREFORE, for reason stated above, the Petitioners request that the foregoing Motion for Withdrawal be granted.

Respectfully submitted this 12th day of February, 2002.

By:



Maria A. Abbagnaro
Director of Regulatory Affairs
eLEC Communications
509 Westport Avenue
Norwalk, CT 06851
Tel: (203) 229-2402

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion for Withdrawal of Joint Petition for Waiver of Slamming Rule, Chapter 25-4.118 was sent via overnight delivery on February 12, 2002 to:

Ms. Blanca Bayó, Director
Division of Commission of Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Terry Romine
Director Legal & Regulatory Affairs
Adelphia Business Solutions
One North Main Street
Coudersport, PA 16915-1630



Maria A. Abbagnaro