



Public Service Commission

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

DATE: SEPTEMBER 4, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (PRUITT) *PK for CLK* *JBM*
OFFICE OF THE GENERAL COUNSEL (FORDHAM)

RE: DOCKET NO. 020948-TP - EMERGENCY PETITION FOR WAIVER OF RULE 25-4.118, F.A.C., CARRIER SELECTION REQUIREMENTS, AND RULE 25-4.113, F.A.C., REFUSAL OR DISCONTINUANCE OF SERVICE, AND TO BECOME CONDITIONAL CARRIER FOR CERTAIN LOCAL BUSINESS CUSTOMERS DUE TO TERMINATION OF SERVICE BY ADELPHIA BUSINESS SOLUTIONS INVESTMENT, LLC (HOLDER OF ALEC CERTIFICATE NO. 6056), ADELPHIA BUSINESS SOLUTIONS INVESTMENT EAST, LLC (HOLDER OF ALEC CERTIFICATE NO. 8045), AND ADELPHIA BUSINESS SOLUTIONS OF JACKSONVILLE, INC. (HOLDER OF AAV/ALEC CERTIFICATE NO. 2973), BY SPRINT-FLORIDA, INCORPORATED.

AGENDA: 09/06/02 - SPECIAL AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: TERMINATION OF SERVICE - SEPTEMBER 23, 2002

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020948.RCM

CASE BACKGROUND

On September 3, 2002, Sprint-Florida, Incorporated (Sprint) filed an emergency petition for a temporary waiver of Rules 25-4.118 and 25-4.113, Florida Administrative Code, pursuant to Section 120.542, Florida Statutes, and Rule 28-104.004, Florida Administrative Code, for the transition of certain local business customers from Adelpia Business Solutions Investment, LLC, Adelpia Business Solutions Investment East, LLC, and Adelpia

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Business Solutions of Jacksonville, Inc. (collectively, Adelphia).

Rule 25-4.118, Florida Administrative Code, requires customer authorization before submitting a preferred carrier change. Rule 25-4.113, Florida Administrative Code, outlines the conditions under which telecommunication services can be refused or disconnected.

This is staff's recommendation regarding Sprint's request for an emergency waiver of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection and Rule 25-4.113, F.A.C., Refusal or Discontinuance of Service by Company.

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

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant the emergency petition of Sprint-Florida, Incorporated for a waiver of Rules 25-4.118 and 25-4.113, Florida Administrative Code?

RECOMMENDATION: Yes. Staff recommends that the Commission grant Sprint's emergency petition for a waiver in this instance. (Pruitt)

STAFF ANALYSIS: Pursuant to Rule 25-4.118, Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Sprint seeks a waiver of this rule, which requires prior to a carrier change:

- (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; or
- (c) A third party firm has verified the customer's requested change.

Adelphia's parent company, Adelphia Business Solutions Operations, Inc., has filed for bankruptcy protection. According to Sprint's emergency petition, Adelphia represented that its customers were notified that Adelphia was discontinuing service and that the customers would need to select another local carrier by September 1, 2002. However, Sprint asserts that its records show that as of August 30, 2002, customers with a total of approximately 2,500 access lines have not requested a change to another local carrier. Adelphia has requested termination of its service by September 23, 2002. Those customers who still have not chosen another local carrier by the 23rd will be disconnected.

Sprint asserts that its emergency waiver request meets the standards of Section 120.542, Florida Statutes, and that of the underlying statute 364.01(4), Florida Statutes, "to ensure that basic local telecommunications services are available to all consumers." The petition states that the waiver is necessary to satisfy that objective. Although notices were sent by Adelphia to its business customers, no mention was made of transitioning customers to Sprint if the customers did not choose another local carrier.

In order for Sprint to provide a notice to all affected customers informing them that Adelphia will no longer be providing local service after September 23, 2002, Sprint needs Adelphia's customer contact list. Section 364.24, Florida Statutes, prohibits a telecommunications company from disclosing customer account information except under certain conditions. In Order No. PSC-01-0812-PAA-TP the Commission found that it would be appropriate for an alternative local exchange provider (ALEC) to share this information with an incumbent local exchange company, given the importance of making service available to customers, and directed the ALEC to release the customer account information subject to the protective order.

The Sprint draft notice states that those customers not choosing another local carrier by the 23rd will be switched, without carrier change charges or interruption of service, to Sprint. Adelphia's customers are also informed that continuation of service with Sprint is subject to payment of any prior unpaid balance owed to Sprint, deposits as necessary, and that noncompliance may result in immediate discontinuation of service. The notice also informs them that prior to the switch on September 23, 2002, they may select a carrier other than Sprint.

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 local service. Because thousands of customers are affected, a substantial workload increase would be placed on Sprint's customer service department and impede Sprint's ability to respond to these customers, as well as its normal customer requests not related to this massive disconnection of service. Furthermore, staff believes that granting a waiver of Rule 25-4.118, F.A.C., will avoid unnecessary slamming complaints during this transition.

Rule 25-4.113, F.A.C., sets forth the notification requirements prior to disconnection of telecommunications service. Sprint has requested that it be allowed to disconnect service without notification to any transitioned customer that does not comply with Sprint's deposit or payment requirements. The purpose of the rule is to balance the interests of customers and providers by setting forth the conditions under which service may be discontinued or denied. This fairness principle appears to be met in Sprint's petition in that customers are notified of their financial obligations for continuance of service, prior to their transition to Sprint. After their transition to Sprint, customers will be notified of any deposit and/or previous unpaid balance due.

Sprint filed its request in accordance with Rule 28-104.004, Florida Administrative Code, Petition for Emergency Variance or Waiver, which provides that persons seeking emergency waivers shall so state in the caption of the petition, shall submit a petition in compliance with Section 120.542(5), Florida Statutes, and shall specifically allege the reasons the situation is an emergency and the waiver is necessary on an expedited time frame. Under Rule 28-104.004, Florida Administrative Code, the notice and comment period provided for in Section 120.542(6), Florida Statutes, are not required. Staff believes that Sprint has sufficiently shown that this is an emergency situation that warrants processing the request on an expedited basis.

Furthermore, staff believes that Sprint has sufficiently demonstrated that the waiver meets the purpose of the underlying statutes and is, in fact, necessary to fulfill the purpose of Sections 364.01, 364.03, and 364.19, Florida Statutes. Accordingly, staff recommends that the Commission grant Sprint's emergency petition for a waiver of Rules 25-4.118 and 25-4.113, Florida Administrative Code, in this instance.

DOCKET NO. 020948-TP
DATE: SEPTEMBER 4, 2002

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Fordham)

STAFF ANALYSIS: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.