



Public Service Commission
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DATE: JULY 24, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (T.WILLIAMS)
OFFICE OF THE GENERAL COUNSEL (J.ROJAS) JR 7/24

RE: DOCKET NO. 030513-TP - REQUEST BY ESSEX ACQUISITION
CORPORATION FOR WAIVER OF CARRIER SELECTION REQUIREMENTS
OF RULE 25-4.118, F.A.C., FOR TRANSFER OF LOCAL AND LONG
DISTANCE CUSTOMERS FROM NOW COMMUNICATIONS, INC.

AGENDA: 08/05/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030513.RCM

CASE BACKGROUND

On June 4, 2003, this Commission received a petition from Swidler Berlin Shereff Friedman, LLP, on behalf of their clients, NOW Communications, Inc. (holder of CLEC Certificate No. 5652 and IXC Registration No. TJ102) and Essex Acquisition Corporation d/b/a VeraNet Solutions (holder of CLEC Certificate No. 8326 and IXC Registration No. TJ777), for a waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, because of the acquisition of the customer base of NOW Communications, Inc.

NOW Communications, Inc. has recently filed for reorganization under Chapter 11 of the U.S. Bankruptcy Laws in the U.S. Bankruptcy court for the Southern District of Mississippi, and this request is the result of the execution of an Asset Purchase Agreement.

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The affected customers will not experience any changes to their respective current services. Essex Acquisition Corporation d/b/a VeraNet Solutions has stated they will adopt the terms and conditions of NOW Communications, Inc.'s tariffs and price lists, and the acquisition will be transparent to the customers.

There are no outstanding penalties, interest, or Regulatory Assessment Fees (RAFs) owed by Essex Acquisition Corporation d/b/a VeraNet Solutions. The Commission is vested with jurisdiction in this matter pursuant to Section 364.603, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of local and long distance customers from NOW Communications, Inc. to Essex Acquisition Corporation d/b/a VeraNet Solutions (VeraNet)?

RECOMMENDATION: Yes. (Williams)

STAFF ANALYSIS: Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that a carrier will submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency (LOA) . . . from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service . . . ;
- (c) A firm that is independent and unaffiliated with the provider . . . has verified the customer's requested change . . .

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.

Rule 25-24.455(4), Florida Administrative Code, reads 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 . .

VeraNet has attested that it has provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Staff has reviewed the notice that was sent to NOW Communications, Inc. customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

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. 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 complaints during this transition.

Therefore, staff recommends that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance.

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. (Rojas)

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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.