



# 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-

RECEIVED FPSC  
JUL 24 AM 11:40  
COMMISSION CLERK

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 (HARRIS) *GR for Lit*

RE: DOCKET NO. 030483-TI - JOINT APPLICATION FOR WAIVER OF CARRIER SELECTION REQUIREMENTS OF RULE 25-4.118, F.A.C. FOR TRANSFER OF PARTIAL CUSTOMER BASE FROM THE FREE NETWORK, L.L.C. (HOLDER OF IXC CERTIFICATE NO. 7090) TO LIGHTYEAR COMMUNICATIONS, INC. (HOLDER OF IXC CERTIFICATE NO. 3500).

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\030483.RCM

### CASE BACKGROUND

On June 4, 2003, this Commission received a petition from Technologies Management, Inc., on behalf of their client, Lightyear Communications, Inc. (Registration No. TI189), for a waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider, because of the partial acquisition of the customer base of The Free Network, L.L.C. (Registration No. TJ237).

Pursuant to the transfer agreement executed in March 2003, approximately 443 customers in Florida will be transferred from The Free Network, L.L.C. (TFN) to Lightyear Communications, Inc. (Lightyear) on or about August 1, 2003. The affected customers

DOCUMENT NUMBER DATE

06662 JUL 24 8

FPSC-COMMISSION CLERK

will not experience any changes to their respective current services.

There are no outstanding penalties, interest, or Regulatory Assessment Fees (RAFs) owed by Lightyear. 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 long distance customers from The Free Network, L.L.C. to Lightyear Communications, Inc.?

**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 . . .

Lightyear Communications, Inc. 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 The Free Network, L.L.C. customers and found it to be adequate. The customers should not experience any interruptions 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. (Harris)

**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.