

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 030513-TP  
ORDER NO. PSC-03-0956-PAA-TP  
ISSUED: August 22, 2003

The following Commissioners participated in the disposition of  
this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING WAIVER OF CARRIER SELECTION REQUIREMENTS AND  
APPROVING TRANSFER OF LOCAL AND LONG DISTANCE CUSTOMERS

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.

CASE BACKGROUND

On June 4, 2003, we 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,

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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.

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. We are vested with jurisdiction in this matter pursuant to Section 364.603, Florida Statutes.

#### 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. We have 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.

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. 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, we find that granting this waiver will avoid unnecessary slamming complaints during this transition.

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

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, are waived in this instance as requested by Essex Acquisition Corporation. 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

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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 22nd Day of August, 2003.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Marcia Sharma  
Marcia Sharma, Assistant Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

JPR

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.

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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 September 12, 2003.

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.