

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition for waiver of carrier selection requirements of Rule 25-4.118, FAC, to allow KMC Telecom III LLC to transfer certain customer accounts to TelCove Investment, LLC.

DOCKET NO. 050182-TP
ORDER NO. PSC-05-0593-PAA-TP
ISSUED: May 27, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING JOINT PETITION FOR WAIVER OF CARRIER SELECTION
REQUIREMENTS

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.

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 shall 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 . . .

DOCUMENT NUMBER-DATE

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FPSO-COMMISSION CLERK

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 intrastate interexchange telecommunications companies (IXCs).

Rule 25-24.455(4), Florida Administrative Code, states in part:

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.

Pursuant to Rule 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to competitive local exchange telecommunications companies (CLECs).

Section 364.337(2), Florida Statutes, states in pertinent part:

A certificated competitive local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be in the public interest.

The authority for Rule 25-4.118, Florida Administrative Code, is found in Section 364.603, Florida Statutes, which is a section we are authorized to waive.

TelCove Investment, LLC (TelCove) has attested that it will provide 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 will be sent to KMC Telecom III LLC's (KMC's) customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

In addition, TelCove and KMC provided the following statements in a letter dated May 3, 2005, regarding outstanding consumer complaints:

TelCove and KMC expect to close on the proposed transaction on June 30, 2005. Therefore, KMC Telecom Holdings Company, Inc., the parent company of KMC Telecom III, LLC will resolve all outstanding customer complaints that have been billed or filed against KMC Telecom III, LLC and that, as of June 30, 2005, have not been paid or resolved.

Beginning July 1, 2005, TelCove will resolve all customer complaints that have been billed or filed against TelCove, including complaints by customers transferred from KMC that arise on or after July 1, 2005.

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 local and long distance service. Furthermore, we find that granting this waiver will avoid unnecessary slamming complaints during this transition.

We are vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, 364.345 and 364.603, Florida Statutes.

Therefore it is

ORDERED by the Florida Public Service Commission that it is appropriate in this instance to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. 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 27th day of May, 2005.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(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.

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 June 17, 2005.

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.