

State of Florida



Public Service Commission  
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
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COMMISSION  
CLERK

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**DATE:** November 17, 2005

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Competitive Markets & Enforcement (McCoy) *gmm*  
Office of the General Counsel (McKay) *1/3M dk*

**RE:** Docket No. 050647-TX – Request for transfer of and name change on CLEC Certificates 5687, 4695, and 4699 held by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc., respectively, to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions, respectively, and for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., effective upon written notification from Comtel Telcom Assets LP that transfer of assets is complete.

Docket No. 050648-TI – Acknowledgment of registrations as intrastate interexchange telecommunications companies by Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions; acknowledgment of cancellation of IXC Registration Nos. TI922, TI070, and TI291 by Excel Telecommunications, Inc., VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications, and VarTec Solutions, Inc., respectively; and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.; effective upon written notification from Comtel Telcom Assets LP that transfer of assets is complete.

**AGENDA:** 11/29/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\050647.RCM.DOC

DOCUMENT NUMBER-DATE

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COMMISSION CLERK

### Case Background

On September 26, 2005, the Commission received a request for transfer of and name change on Competitive Local Exchange Company (CLEC) Certificates 5687, 4695, and 4699 held by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. (collectively, VarTec Companies) to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions (collectively, Comtel Companies); and acknowledgment of registration as intrastate interexchange telecommunications (IXC) companies by the Comtel Companies; acknowledgment of cancellation of IXC Registration Nos. TI922, TI070, and TI291 by the VarTec Companies; and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.

The VarTec Companies filed for Chapter 11 bankruptcy on November 1, 2004, in the Dallas Division of the United States Bankruptcy Court for the Northern District of Texas (Court) consolidated under Case No. 04-81694-HDH-11. As part of the bankruptcy process, the VarTec Companies entered into an asset purchase agreement with Comtel Investments LLC. The parties executed the asset purchase agreement on July 25, 2005, which was subsequently approved by the Court on July 27, 2005.

The parties anticipate that all transactions, etc., will be finalized by the end of 2005. However, Comtel Telcom Assets LP requests that it be allowed to provide written notice to the Commission of the date that certificate transfers, IXC registrations and IXC cancellations should take effect. The IXC cancellations for the VarTec Companies and IXC registrations for the Comtel Companies are being separately handled by staff in accordance with Section 2.07.C of the Administrative Procedures Manual and are not included in this recommendation.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, 364.345 and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

**Discussion of Issues**

**Issue 1:** Should the Commission approve the transfer of and name change on CLEC Certificate Nos. 5687, 4695, and 4699 held by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions, effective upon written notification from Comtel Telcom Assets LP that the transfer of assets is complete?

**Recommendation:** Yes, The Commission should approve the requested transfer of and name changes on CLEC Certificate Nos. 5687, 4695, and 4699. **(McCoy, McKay)**

**Staff Analysis:** Pursuant to Section 364.345(2), Florida Statutes, Certificates; territory served; transfer, a telecommunications company may not sell, assign, or transfer its certificate or any portion thereof without (a) a determination by the commission that the proposed sale, assignment, or transfer is in the public interest; and (b) the approval of the Commission.

After a review of the applications, the proposed transactions would not adversely affect customers as the Comtel Companies will continue to provide the same services that are currently provided by the VarTec Companies. The Comtel Companies will adopt the current VarTec Companies' price lists that are on file with the Commission. The customers will retain the same rates, terms, and conditions of service as currently provided by the VarTec Companies.

Therefore, staff recommends that the Commission approve the transfer of and name change on CLEC Certificate Nos. 5687, 4695, and 4699 held by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions, effective upon written notification from Comtel Telcom Assets LP that the transfer of assets is complete.

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**Issue 2:** Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions?

**Recommendation:** Yes, the Commission should approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. (McCoy/McKay)

**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 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 . . .

Pursuant to Rule 25-24.475(3), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXC's.

Rule 25-24.455(2), Florida Administrative Code, states:

An IXC may petition for a waiver of any provision of this Part. The waiver shall be granted in whole, granted in Part or denied based on the following:

- (a) The factors enumerated in Section 364.337(4), Florida Statutes;
- (b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived;
- (c) Alternative regulatory requirements for the company which may serve the purposes of this part; and
- (d) Whether the waiver is in the public interest.

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 CLEC's.

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.

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

Comtel Telcom Assets LP 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. The customers should not experience any interruption of service, rate increase, or switching fees. The transfer process will be transparent to the end users as the bills will continue to bear the same company names (Comtel Companies have registered the VarTec Companies' names as fictitious names).

In addition, Comtel Telcom Assets LP provided the following statements in correspondence dated November 7, 2005, regarding outstanding consumer complaints:

"...Once the transaction is consummated, it is anticipated that the PSC may initially contact Comtel's Regulatory Department for assistance with complaint matters involving customers from VarTec Telecom, Inc., including Clear Choice Communications, Excel Telecommunications, Inc. or VarTec Solutions, Inc. Based on the circumstances of each complaint matter, Comtel and the VarTec Companies will determine responsibility between the two parties, while ensuring a timely resolution for the customer. As with the overall transaction, the process will be seamless to the customer. The toll-free customer service telephone numbers used by customers are expected to remain unchanged post-consummation."

Excel Telecommunications, Inc., VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications, and VarTec Solutions, Inc. do not have any outstanding regulatory assessment fees, penalties or interest associated with either its CLEC certificates or IXC registrations subsequent to their post-petition Chapter 11 bankruptcy filing date. The companies do have outstanding regulatory assessment fees owed prior to the pre-petition Chapter 11 bankruptcy filing date. Payments of pre-petition debts owed by the VarTec Companies will be made in accordance with instructions provided by the Court.

The VarTec companies state they will pay their 2005 regulatory assessment fees at the time written notification of the completed transfer of assets is submitted to the Commission. If the transaction is completed by December 31, 2005, the VarTec Companies will only owe regulatory assessment fees for 2005, which requires payment no later than January 30, 2006. If the transaction is completed on or after January 1, 2006, the VarTec companies will also owe regulatory assessment fees for 2006.

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

Therefore, staff recommends that the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of

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customers from VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. to Comtel Telecom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telecom Assets LP d/b/a Excel Telecommunications, and Comtel Telecom Assets LP d/b/a VarTec Solutions.

**Issue 3:** Should these dockets 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, the order will become final and effective upon the issuance of a consummating order. These dockets should be closed administratively upon receipt of written notification from Comtel Telecom Assets LP that the transfer of assets is complete and upon receipt of payment of the 2005 and 2006 (if applicable) regulatory assessment fees by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. for both its CLEC and IXC operations. If VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. fails to pay its 2005 and 2006 (if applicable) regulatory assessment fees, staff will bring this matter back before the Commission for resolution. **(McKay)**

**Staff Analysis:** 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, the order will become final and effective upon the issuance of a consummating order. These dockets should be closed administratively upon receipt of written notification from Comtel Telecom Assets LP that the transfer of assets is complete and upon receipt of payment of the 2005 and 2006 (if applicable) regulatory assessment fees by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. for both its CLEC and IXC operations. If VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. fails to pay its 2005 and 2006 (if applicable) regulatory assessment fees, staff will bring this matter back before the Commission for resolution.