

State of Florida



Public Service Commission

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DATE: December 8, 2005

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

FROM: Division of Competitive Markets & Enforcement (M. Watts) *MWA*
Office of the General Counsel (Susac) *PKW*

RE: Docket No. 050836-TI – Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to asset purchase agreement between Adelphia Telecommunications, Inc. and Telecom Management, Inc. d/b/a Pioneer Telephone.

AGENDA: 12/20/05 – 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\050836.RCM.DOC

Case Background

On October 24, 2005, Adelphia Telecommunications, Inc. (Adelphia) and Telecom Management, Inc. d/b/a Pioneer Telephone (Pioneer) submitted a request to the Florida Public Service Commission (the Commission) for waiver of carrier selection requirements of Rule 25-4.118, Florida Administrative Code, due to an intrastate interexchange company (IXC) asset purchase agreement between the companies.

Since June 25, 2002, Adelphia has been operating under the protection of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The

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sale of the customers and assets of Adelphia pursuant to the Agreement has been approved by the Bankruptcy Court.

The Acquisition contemplates the following:

a. Pioneer will receive ownership, right, title and interest in and to substantially all of Adelphia's long distance telecommunications assets, including its customer accounts, as defined in the Agreement.

b. The bankruptcy estate of Adelphia will receive the purchase price set forth in the Agreement, pursuant to an Order of the Bankruptcy Court approving the Agreement.

Pioneer proposes the Acquisition to consolidate the business and customer accounts of Adelphia with Pioneer in order to create a single, larger provider of telecommunications services, facilitating efficiencies to benefit all of Pioneer's and Adelphia's customers.

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

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 customers from Adelphia Telecommunications, Inc. to Telecom Management, Inc. d/b/a Pioneer Telephone?

Recommendation: Yes, the Commission should approve the requested waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. **(M. Watts, Susac)**

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.

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.

Pioneer 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.

In addition, Pioneer stated in its sample letter to customers that it will be responsible for any outstanding Adelphia complaints after the date of the transfer.

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Further, neither Adelphia nor Pioneer has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registrations.

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 customers from Adelphia Telecommunications, Inc. to Telecom Management, Inc. d/b/a Pioneer Telephone.

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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. **(Susac)**

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, this docket should be closed upon the issuance of a consummating order.