

State of Florida



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: May 25, 2006

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

FROM: Division of Competitive Markets & Enforcement (Curry) *KLC*
Office of the General Counsel (Tan) *PTW*

RE: Docket No. 060364-TI – Request for waiver of carrier selection requirements of Rule 25-4.118, FAC, due to asset purchase agreement, whereby TTUSA Acquisition, Inc. will acquire assets of YesTel, Inc., including, but not limited to, YesTel's customer accounts in the State of Florida.

AGENDA: 06/06/06 – 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\060364.RCM.DOC

Case Background

YesTel, Inc. (YesTel) and TTUSA Acquisition, Inc. (TTUSA) are both registered intrastate interexchange telecommunications companies (IXC) that provide interexchange telecommunications services in Florida. On May 1, 2006, staff received a letter advising the Commission of an asset purchase agreement between YesTel and TTUSA, whereby TTUSA would acquire the assets and customer accounts of YesTel. The parties also requested a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code.

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This waiver is being sought to provide the Commission notice of the transfer of assets for the treatment of customers in a consumer-friendly manner and allows for a transition to occur in a smooth process protecting both the consumer and the company. Without this waiver, TTUSA would be required to obtain signed letters of agency (LOAs) or third party verifications (TPVs) from each customer being transferred. With the waiver, TTUSA can protect itself from possible complaints of unauthorized carrier changes. This waiver is also beneficial to the customers as they will not be subject to a loss of service on the date of transfer.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, and 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 customers from YesTel, Inc, to TTUSA Acquisition, Inc.?

Recommendation: Yes, the Commission should approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from YesTel, Inc. to TTUSA Acquisition, Inc. **(Curry, Tan)**

Staff Analysis: Pursuant to Rule 25-4.118, 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 IXCs.

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.

TTUSA has attested that it will provide for a seamless transition while ensuring that the affected customers will continue to receive the same services and rates that the customers currently receive from YesTel. If any of YesTel's rates are not currently included in TTUSA's tariff, TTUSA will amend its tariff to include those rates. Staff has reviewed the notice that will

be sent to YesTel's customers and found it to be adequate. Currently YesTel has no outstanding customer complaints. If customer complaints are filed against YesTel and are not resolved prior to the transaction, TTUSA has stated that it will resolve all of the outstanding complaints.

Neither YesTel nor TTUSA have any outstanding regulatory assessment fees, penalties or interest associated with their 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 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 YesTel to TTUSA.

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Issue 2: Should this docket be closed?

Recommendation: The Order issued in the recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interest are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested this docket should be closed administratively upon issuance of the Consummating Order. **(Tan)**

Staff Analysis: Staff recommends that the Commission take action as set forth in the above staff recommendation.