

State of Florida



Public Service Commission

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COMMISSION CLERK

DATE: February 1, 2007

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

FROM: Division of Competitive Markets & Enforcement (M. Watts) *N DM*
Office of the General Counsel (McKay) *VSM PKW*

RE: Docket No. 060781-TP – Request for cancellation of CLEC Certificate Nos. 8371 and 7804 by Acceris Management and Acquisition LLC and New Access communications LLC, respectively, acknowledgment of cancellation of IXC Registration Nos. TK011 and TJ511 by Acceris Management and Acquisition LLC and New Access Communications LLC, respectively, effective March 1, 2007, and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to transfer of assets to First Communications, LLC.

AGENDA: 02/13/07 – 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\060781.RCM.DOC

Case Background

On December 7, 2006, Acceris Management and Acquisition LLC (AMA), New Access Communications LLC (NAC), and First Communications, LLC (FCL), each intrastate interexchange companies (IXCs) and competitive local exchange companies (CLECs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code.

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FCL is acquiring certain assets from AMA and NAC, including customer accounts and account receivables. FCL seeks the waiver so that it will not have to obtain each customer's authorization. With the waiver, FCL can protect itself from possible complaints of unauthorized carrier changes (slamming). Customers will benefit because they will not be subject to a loss of service during the transfer of assets.

At the conclusion of the transaction, AMA and NAC request voluntary cancellation of their respective IXC registrations and CLEC certificates. The cancellations are not addressed in this recommendation.

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

Discussion of Issues

Issue 1: Should the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Acceris Management and Acquisition LLC's and New Access Communications LLC's customers to First Communications, LLC?

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

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 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 the Commission is authorized to waive.

FCL 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. Staff has reviewed the notice that will be sent to AMA's and NAC's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Staff is working directly with the companies to ensure that all regulatory assessment fees will be paid. Further, neither AMA, NAC nor FCL has any active customer complaints on file with the Commission. FCL will be responsible for resolving any complaints from customers it acquires from AMA and/or NAC upon assumption of the customers from either company.

Staff believes that in this instance it is appropriate 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 services. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, staff recommends that the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Acceris Management and Acquisition LLC's and New Access Communications LLC's customers to First Communications, LLC.

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