

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: March 29, 2007

TO: Commission Clerk (Cole)

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

RE: Docket No. 070125-TI – Joint Petition by Cause Based Commerce Incorporated d/b/a The Sienna Group and PowerNet Global Communications for authority to acquire certain assets of PowerNet Global Communications, and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.

AGENDA: 04/10/07 – 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\070125.RCM.DOC

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Case Background

On February 23, 2007, Cause Based Commerce Incorporated d/b/a The Sienna Group (TSG) and PowerNet Global Communications (PNG), both intrastate interexchange companies (IXCs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. The purpose of filing for the waiver is so PNG can transfer certain customer accounts to TSG without TSG having to obtain each customer's authorization. TSG was formerly an agent for PNG, and the customers being transferred are all of the customers that TSG acquired for PNG as its agent. Approximately 350 customers are being

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transferred. PNG will retain its IXC registration with the Commission and will continue providing long distance service in Florida.

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 to allow for a transition to occur in a smooth process protecting both the consumers and the company. Without this waiver, TSG would be required to obtain signed letters of agency (LOAs) or third party verifications (TPVs) from each customer being transferred. With the waiver, TSG 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. Thus, this recommendation addresses the request for waiver of Rule 25-4.118, Florida Administrative Code, for intrastate interexchange telecommunications services.

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 request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of PowerNet Global Communications' customers to Cause Based Commerce Incorporated d/b/a The Sienna Group?

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/Wiggins)**

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.

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.

TSG 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 PNG's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Neither PNG nor TSG has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration. Further, TSG has no active customer complaints on file with the Commission, and PNG has two active customer complaints. The customers who filed these two complaints, however, will not be affected by the transfer and will continue to be served by PNG. TSG stated in a notarized letter if a former PNG customer files a complaint about the service provided by PNG prior to the transfer, TSG would refer the complaint to PNG and PNG would resolve it. Since PNG will maintain an active IXC registration with the Commission, staff believes that this is acceptable.

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 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 PowerNet Global Communications' customers to Cause Based Commerce Incorporated d/b/a The Sienna Group.

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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. **(Wiggins)**

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.