

BEFORE THE PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 070125-TI  
ORDER NO. PSC-07-0389-PAA-TI  
ISSUED: May 2, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
MATTHEW M. CARTER II  
KATRINA J. McMURRIAN

NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING  
WAIVER OF THE CARRIER SELECTION REQUIREMENTS  
OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

**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 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,

DOCUMENT NUMBER-DATE

03725 MAY-26

FPSC-COMMISSION CLERK

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.

### Analysis

This order 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, we believe the following recommendations are appropriate.

#### Requirements of the Rule

Under 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 . . . .

Under 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.

Justification for Waiver

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. Our 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, we believe that this is acceptable.

Ruling

We conclude 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 situation, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their long distance services. Furthermore, we believe that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, we 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.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that the above described request for the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, is *approved*. It is further

ORDERED that the findings made in the body of this Order are hereby approved in every respect. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 2nd day of May, 2007.

  
\_\_\_\_\_  
ANN COLE  
Commission Clerk

( S E A L )

PKW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 23, 2007.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.