

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: December 6, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Curry) *KLC*
Office of the General Counsel (Poblete) *al paw*

RE: Docket No. 070700-TI – Joint petition for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to allow the transfer of customers from Least Cost Routing, Inc. to Primus Telecommunications, Inc. due to internal reorganization whereby Least Cost Routing, Inc. will merge into Primus Telecommunications, Inc., and acknowledgement of cancellation of IXC Registration No. TI387 by Least Cost Routing, Inc., effective December 31, 2007.

AGENDA: 12/18/07 – 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\070700.RCM.DOC

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Case Background

On November 27, 2007, Primus Telecommunications, Inc. (PTI) and its affiliate Least Cost Routing, Inc. (LCR) submitted a joint petition for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, (F.A.C.) due to internal reorganization whereby LCR will merge into PTI, leaving PTI as the surviving company. LCR will transfer 31 customers to PTI.

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Both PTI and LCR are registered intrastate interexchange telecommunications companies (IXC) that provide interexchange telecommunications services in Florida. This waiver is being sought to prevent PTI from having to obtain authorization from each customer being transferred to the company. With the waiver, PTI can protect itself from possible complaints of unauthorized carrier changes (slamming). This waiver is also beneficial to the customers as they will not be subject to a loss of service on the date of transfer.

Following the merger, LCR will cease to exist. Therefore, LCR is also seeking cancellation of its IXC Registration. The cancellation of LCR's IXC registration will be handled separately, in accordance with Section 2.07.C.5.i., Administrative Procedures Manual, and will not be addressed in this recommendation.

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 request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to allow the transfer of customers from Least Cost Routing, Inc. to Primus Telecommunications, Inc. due to internal reorganization whereby Least Cost Routing, Inc. will merge into Primus Telecommunications, Inc.?

Recommendation: Yes, the Commission should approve the request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to allow the transfer of customers from Least Cost Routing, Inc. to Primus Telecommunications, Inc. due to internal reorganization whereby Least Cost Routing, Inc. will merge into Primus Telecommunications, Inc. **(Curry, Poblete)**

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.

PTI has attested that it will provide a seamless transition while ensuring that the affected customers will continue to receive the same services and rates that the customers currently

receive from LCR. PTI will maintain a tariff that duplicates the service offering, rates, terms and conditions as filed in the current LCR tariff. Staff reviewed the notice and found it to be adequate. Currently, LCR does not have any outstanding complaints. If customer complaints are filed against LCR prior to the merger, PTI will resolve all of the outstanding complaints.

Neither PTI nor LCR have any outstanding regulatory assessment fees, penalties or interest associated with their respective 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, to allow the transfer of customers from LCR to PTI.

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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 administratively upon the issuance of a consummating order. **(Poblete)**

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 administratively upon the issuance of a consummating order.