

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to allow Startec Global Operating Company to transfer long distance customer accounts to Americatel Corporation; and request for cancellation of IXC Registration No. TK051, effective on consummation of transaction.

DOCKET NO. 090076-TI
ORDER NO. PSC-09-0228-PAA-TI
ISSUED: April 13, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING WAIVER OF CARRIER SELECTION REQUIREMENTS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission ("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 10, 2009, Americatel Corporation d/b/a 1010 123 Americatel d/b/a 10-15-688 AMETEX d/b/a 1 800 3030 123 Americatel Collect ("Americatel") and STARTEC Global Operating Company ("STARTEC") ("collectively "Companies"), 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 ("F.A.C.").¹ The requested waiver will permit STARTEC to transfer customer accounts to Americatel without obtaining each of its

¹ STARTEC also requested that its IXC registration be canceled upon completion of the merger transaction. However, this Order addresses only the request for waiver of the carrier selection requirements. The STARTEC IXC registration cancellation request will be processed administratively in accordance with our procedures.

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approximately 6,263 customer's authorization and is sought by the Companies in order to provide this Commission with notice of the transfer of STARTEC assets, and to provide for a smooth transition that protects both the consumers and Americatel. Without this waiver, Americatel will be required to obtain signed letters of agency ("LOAs") or third party verifications from each customer being transitioned from STARTEC to Americatel. With the waiver, Americatel protects itself against possible complaints of unauthorized carrier changes and protects STARTEC customers against a potential loss of service on the date that assets are transferred from STARTEC to Americatel.

We are vested with jurisdiction in this matter pursuant to Sections 364.02(14)(g) and 364.603, Florida Statutes (F.S.).

Analysis

Pursuant to Rule 25-4.118(1), F.A.C., a customer's carrier cannot be changed without that customer's authorization. Rule 25-4.118(2), F.A.C., provides in pertinent part that a carrier shall submit a change request only if one of the following has occurred:

- (a) The provider has an 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.²

The Companies have requested that Rule 25-4.118, F.A.C., be waived.

An IXC may petition for a waiver of any provision of the rules governing IXCs and we may grant in whole, grant in part, or deny the petition for waiver based on the following:

- The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived;
- Alternative regulatory requirements for the company which may serve the purposes of this part; and
- The extent to which a waiver would serve the public interest.³

Americatel has attested that it will provide for a seamless transition with the least amount of disruption to STARTEC customers while also ensuring that the affected customers understand available choices. We have reviewed the notice that was sent to STARTEC's customers and find it to be adequate and that the customers are not expected to experience any interruption of service, rate increase, or switching fees.

Neither STARTEC nor Americatel has any outstanding regulatory assessment fees, penalties, or interest associated with its IXC registration. At the time of our review, Americatel

² Rule 25-4.118, F.A.C., applies to IXCs pursuant to Rule 25-24.475(3), F.A.C.

³ Rule 25-24.455(2), F.A.C.

had two active customer complaints on file with this Commission, and STARTEC had no active customer complaints. Americatel is actively working with our staff to resolve the existing complaints against the company. During and after the transfer, STARTEC customers will be able to use existing customer service numbers for complaints and Americatel has agreed to handle all complaints that are, or have been, filed by STARTEC customers.

Decision

Upon review, we find that if prior authorization were required, STARTEC customers might inadvertently lose their long distance services and that granting the waiver request also will minimize slamming complaints during the anticipated transition.

Based on the foregoing, we find that it is appropriate to waive the carrier selection requirements and hereby approve the STARTEC and Americatel joint request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C., in the transfer of STARTEC Global Operating Company's customers to Americatel Corporation d/b/a 1010 123 Americatel d/b/a 10-15-688 AMETEX d/b/a 1 800 3030 123 Americatel Collect.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the joint request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. is hereby approved as set forth in the body of this Order. It is further

ORDERED that the waiver shall apply to only the specific set of customers identified by the Companies in their petition. It is further

ORDERED that Americatel is hereby required to provide the Commission with notification of the date that the merger with STARTEC is completed. It is further

ORDERED that if no person whose substantial interests are affected by this proposed agency action files a protest within 21 days of the issuance of this Order, it shall become final upon issuance of a consummating order. It is further

ORDERED that this Docket shall remain open pending both a) the notification from Americatel that the merger with STARTEC is completed and b) the administrative cancellation of IXC Registration No. TK051; thereupon, this Docket shall be closed administratively. It is further

ORDERED that if the merger is not completed, the waiver approval granted by this Order shall be null and void and this Docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 13th day of April, 2009.



ANN COLE
Commission Clerk

(S E A L)

CWM

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 4, 2009.

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.