

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: July 22, 2004

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

FROM: Division of Competitive Markets & Enforcement (Hawkins)
Office of the General Counsel (Rojas)

RE: Docket No. 040607-TI – Petition for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to allow Covista, Inc. to transfer certain commercial long distance customer accounts to PaeTec Communications, Inc.

AGENDA: 08/03/04 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040607.RCM.DOC

Case Background

On June 26, 2004, this Commission received a petition seeking a waiver of the interexchange carrier selection requirements of Rule 25-4.118, Florida Administrative Code, from Covista, Inc. (Covista) and PAETEC Communications, Inc. (PAETEC). Covista (Registration No. TI119) and PAETEC (Registration No. TJ132) are authorized to provide intrastate interexchange telecommunications services in Florida. Both companies informed the Commission that this request is to transfer certain commercial long distance customers of Covista to PAETEC.

Rule 25-24.490, Florida Administrative Code, incorporates Rule 25-4.118, Florida Administrative Code, thereby extending applicability to interexchange carriers. The basis for seeking a waiver is set forth in Rule 25-24.455(4), Florida Administrative Code. The Commission may consider whether the petition is in the public interest, whether market forces obviate the need for the provision in a particular instance, and whether reasonable alternative regulatory methods may serve the same purpose.

PAETEC has determined that the acquisition of certain commercial long distance customers from Covista will enable it to expand its operations in a cost efficient manner, thereby enhancing its competitive position and ability to provide integrated telecommunications services to customers in Florida, as well as other states.

To ensure a seamless transition, Covista and PAETEC have informed the Commission staff that notification regarding these changes has been sent to all affected customers. **(ATTACHMENT A)** The customers were given not less than 30 days prior written notice of the proposed transfer, in compliance with the FCC rule governing carrier-to-carrier customer base transfers. The companies emphasize that the proposed transaction involves neither the transfer nor abandonment of Covista's certificate, nor does it involve any plan by Covista to discontinue service to Florida customers. PAETEC will continue to provide intrastate long distance services to Florida customers pursuant to its own certificate. PAETEC will also amend its Florida tariffs, to the extent necessary, to include the rates and charges that apply to the services purchased by Florida customers. Upon approval of the petition, Florida customers will receive from PAETEC the same services they currently receive from Covista. Covista, in turn, will continue to operate pursuant to its own certificate, without any interruption in or change of service to that portion of its Florida customer base that will not be transferred to PAETEC. The proposed transfer will be virtually transparent to Florida customers in terms of the rates and terms and conditions of service that these customers currently receive.

The Commission has granted petitions for waiver in similar circumstances, such as in prior cases for the following companies: Mpower Communications, Corp./Florida Digital Network, Inc. in Docket No. 030080-TP; Verizon Florida, Inc./Select Services Inc. in Docket No. 010030-TP; PNG Telecommunications/Broadwing in Docket No. 000764-TI, and TTI National/Minimum Rate Pricing in Docket No. 000825-TI.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.01, 364.337 and 364.603, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should PAETEC Communications, Inc. be relieved in this instance of the interexchange carrier selection requirement of Rule 25-4.118, Florida Administrative Code?

RECOMMENDATION: Yes. Staff agrees that PAETEC Communications, Inc. should be relieved in this instance of the interexchange carrier selection requirement of Rule 25-4.118, Florida Administrative Code. **(HAWKINS)**

STAFF ANALYSIS: Pursuant to Rule 25-4.118(1), Florida Administrative Code, the provider of a customer shall not be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that an IXC shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service;
- (c) A third party firm has verified the customer's requested change.

Rule 25-24.455(4), Florida Administrative Code, states the following:

An interexchange company may petition for a waiver of any provision of this Part. The Commission may grant a waiver to the extent that it determines that it is consistent with the public interest to do so. The Commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission may consider:

- (a) The factors enumerated in Section 364.337(4), FL. 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; and
- (c) Alternative regulatory requirements for the company which may serve the purposes of this Part.

Pursuant to Rule 25-24.490, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs. As such, the waiver provisions of Rule 25-24.455 are applicable to Rule 25-4.118 as it applies to IXCs.

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. The companies provided for a transparent transition while insuring that the affected customers understand the available choices with the least amount of disruption to the customers. The customers received notification of the transfer and will have the opportunity to decide whether or not to participate. If prior

Docket No. 040607-TI

Date: July 22, 2004

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 reduce the likelihood of slamming. The Commission has previously granted identical requests in Docket Nos. 030080-TI, 010030-TP; 000764-TI and 000825-TI.

Staff recommends that the interexchange carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived for the transfer of certain commercial customers from Covista to PAETEC.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action order. **(ROJAS)**

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a Proposed Agency Action order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.