

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: October 7, 2004

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

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

RE: Docket No. 041055-TI – Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to acquisition of all telecommunications assets of OneStar Long Distance, Inc., IXC Registration No. TJ759, by Telrite Corporation, IXC Registration No. TJ776; and request for removal from register of IXC Registration No. TJ759 effective September 8, 2004.

AGENDA: 10/19/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\041055.RCM.DOC

Case Background

On September 8, 2004, the Florida Public Service Commission (the Commission) received a petition seeking a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, from OneStar Long Distance, Inc. (OneStar) and Telrite Corporation (Telrite) due to the purchase of the customer base and other telecommunications assets of Telrite. The petition also requests removal of OneStar (Registration No. TJ759) from the register effective September 8, 2004.

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.

Since February 3, 2004, OneStar has been operating under the protection of the United States Bankruptcy Court for the Southern District of Indiana, Evansville Division (the Bankruptcy Court.) In connection with the bankruptcy proceeding, the Bankruptcy Court conducted an auction of OneStar's assets. On July 16, 2004, the Bankruptcy Court issued an order that approved the purchase by Telrite of OneStar's assets.

The companies submitted this petition to allow for the expeditious completion of the acquisition. To ensure a seamless transition and uninterrupted service to OneStar's customers, OneStar and Telrite entered into a management agreement whereby Telrite shall provide financial and managerial support to OneStar, under OneStar's oversight, in order to fund continued operations until such time as regulatory approvals have been obtained. The customers will be informed of the acquisition and given the opportunity to switch their service to another carrier.

Additionally, since Telrite will acquire substantially all of the assets of OneStar and OneStar will thereafter cease operations in Florida, OneStar will no longer require authority to provide interexchange telecommunications services in Florida. OneStar, therefore, requests the Commission to remove Registration No. TJ759 from the register.

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 waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of long distance customers from OneStar Long Distance, Inc. to Telrite Corporation?

Recommendation: Yes. (M. Watts, Scott)

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 25-24.490, 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(4), Florida Administrative Code, states in pertinent part:

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:

(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 may serve the purpose of this Part.

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

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.

Staff notes that Telrite does not have any outstanding regulatory assessment fees, penalties or interest through 2003. OneStar has not paid its 2003 RAFs.

Therefore, staff recommends that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance.

Issue 2: Should the Commission grant OneStar Long Distance, Inc. cancellation of its tariff and removal from the register of Registration No. TJ759 with an effective date of September 8, 2004, due to bankruptcy; notify the Division of the Commission Clerk & Administrative Services that any unpaid RAFs, including statutory penalty and interest charges, should not be sent to the Florida Department of Financial Services for collection and request permission to write-off the uncollectible amounts; and require the company to immediately cease and desist providing intrastate interexchange telecommunications services in Florida?

Recommendation: Yes. (M. Watts, Scott)

Staff Analysis: Section 364.336, Florida Statutes, requires the payment of Regulatory Assessment Fees by January 30 of the subsequent year for telecommunications companies, and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts. Section 364.02, Florida Statutes, establishes the requirements for requesting cancellation of a company's tariff or removal from the register.

The company has advised the Commission that, due to the bankruptcy, it does not have the funds to pay any outstanding RAFs, and has requested that the Commission write off this debt.

The Commission received notice that OneStar had filed for Chapter 11 bankruptcy protection when it filed a joint petition with Telrite for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. In addition, OneStar stated in its petition that its customers would be transferred to Telrite upon approval from the Commission, it would no longer be providing telecommunications services in Florida, and requested removal of its registration from the register.

Therefore, the Commission should grant OneStar Long Distance, Inc. cancellation of its tariff and removal from the register of Registration No. TJ759 with an effective date of September 8, 2004, due to bankruptcy; notify the Division of the Commission Clerk &

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Administrative Services that any unpaid RAFs, including statutory penalty and interest charges, should not be sent to the Florida Department of Financial Services for collection and request permission to write-off the uncollectible amounts; and require the company to immediately cease and desist providing intrastate interexchange telecommunications services in Florida.

Issue 3: 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. **(Scott)**

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.