

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 17, 2005

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

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

RE: Docket No. 041412-TI – Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to transfer of long distance customers from Kiger Telephone & Telephony, LLC to COMTECH21, LLC.

AGENDA: 03/01/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\041412.RCM.DOC

Case Background

On December 20, 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 COMTECH 21, LLC (COMTECH) and Kiger Telephone & Telephony, LLC (Kiger) due to COMTECH's purchase of the customer base of Kiger.

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.

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 Kiger Telephone & Telephony, LLC to COMTECH21, LLC?

Recommendation: Yes. (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.

COMTECH 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 Kiger 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.

Staff notes that Kiger's registration was canceled effective December 31, 2004, pursuant to Order No. PSC-04-1198-PAA-TI, issued on December 3, 2004, in Docket No. 040932-TI, In Re: Compliance investigation of Kiger Telephone & Telephony, LLC for apparent violation of

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Section 364.336, F.S.; and COMTECH does not have any outstanding regulatory assessment fees, penalties or interest.

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

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 upon the issuance of a consummating order. **(Scott)**

Staff Analysis: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.