

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 (Rockette-Gray)

RE: Docket No. 041440-TX – Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to transfer of customers from Alternative Telecommunication Services, Inc. d/b/a Second Chance Phone to Ganoco, Inc. d/b/a American Dial Tone.

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\041440.RCM.DOC

Case Background

On December 27, 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 Ganoco, Inc. d/b/a American Dial Tone (ADT) and Alternative Telecommunication Services, Inc. d/b/a Second Chance Phone (SCP) due to ADT's purchase of the customer base of SCP.

Rule 25-24.845, Florida Administrative Code, incorporates Rule 25-4.118, Florida Administrative Code, thereby extending applicability to competitive local exchange telecommunications companies (CLECs.) The basis for seeking a waiver is set forth in Section 364.337(2), Florida Statutes. The Commission may consider whether the petition is in the public interest.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.337 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 customers from Alternative Telecommunication Services, Inc. d/b/a Second Chance Phone to Ganoco, Inc. d/b/a American Dial Tone?

Recommendation: Yes. (Watts, Rockette-Gray)

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 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to CLECs.

Section 364.337(2), Florida Statutes, states in pertinent part:

A certificated competitive local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be 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.

ADT has attested that it provided for a seamless transition while ensuring that the affected customers understood available choices with the least amount of disruption to the

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customers. Staff reviewed the notice that was sent to SCP customers and found it to be adequate. The customers did 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 had been required in this event, customers would have been disconnected.

Staff notes that SCP's registration was canceled effective January 24, 2005, pursuant to Order No. PSC-04-1247-PAA-TX, issued on December 17, 2004, in Docket No. 041147-TX, In Re: Compliance investigation of Alternative Telecommunication Services, Inc. d/b/a Second Chance Phone for apparent violation of Rule 25-22.032(6)(b), F.A.C., Customer Complaints.

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. **(Rockette-Gray)**

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.