

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: October 20, 2005

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

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

RE: Docket No. 050607-TP – Application for transfer of CLEC Certificate No. 4434 from EPICUS, Inc. d/b/a EPICUS to Epicus Communications Group, Inc.; for acknowledgment of cancellation of IXC Registration No. TI550 held by EPICUS, Inc. d/b/a EPICUS, to be effective on or before December 31, 2005; for acknowledgment of registration of Epicus Communications Group, Inc. as an intrastate interexchange telecommunications company, to be effective on or before December 31, 2005; and for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.

AGENDA: 11/01/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050607.RCM.DOC

Case Background

Epicus, Inc. d/b/a Epicus (Epicus) is a competitive local exchange telecommunications company (CLEC) and is authorized by the Commission pursuant to CLEC Certificate No. 4434 to provide competitive local exchange services in Florida. Epicus also provides intrastate interexchange telecommunications services and is a registered intrastate interexchange

telecommunications company (IXC), Registration No. TI550. On October 25, 2004, Epicus and Epicus Communications Group, Inc. filed for bankruptcy. As part of the company's bankruptcy reorganization efforts, Epicus Communications Group, Inc. plans to acquire all of the assets and business operations of Epicus.

On September 19, 2005, the Commission received an application for transfer of CLEC Certificate No. 4434 from Epicus, Inc. d/b/a Epicus to Epicus Communications Group, Inc.; for acknowledgement of removal from the registry of Epicus, Inc. d/b/a Epicus' IXC Registration No. TI550, and for acknowledgement of registration of Epicus Communications Group, Inc. as an IXC. In addition, Epicus Communications Group, Inc. requested waiver of Rule 25-4.118, Florida Administrative Code, due to the transfer of assets and customers (local and long distance) from Epicus, Inc. d/b/a Epicus to Epicus Communications Group, Inc.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, 364.345, and 364.603, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the transfer of CLEC Certificate No. 4434 from Epicus, Inc. d/b/a Epicus to Epicus Communications Group, Inc.?

Recommendation: Yes, the Commission should approve the transfer of CLEC Certificate No. 4434 from Epicus, Inc. d/b/a Epicus to Epicus Communications Group, Inc. **(Curry, Scott)**

Staff Analysis: Pursuant to Sections 364.345(2), Florida Statutes, Certificates; territory served; transfer, a telecommunications company may not sell, assign, or transfer its certificate or any portion thereof without (a) a determination by the Commission that the proposed sale, assignment, or transfer is in the public interest; and (b) the approval of the Commission.

After reviewing the company's application for transfer, staff has determined that the proposed transaction would not adversely affect the customers of Epicus and that Epicus Communications Group, Inc. will continue to provide the same services that are currently being provided by Epicus. Epicus Communications Group, Inc. will also maintain the same rates and the same terms and conditions of service that Epicus currently provides. Therefore, staff believes that it is in the public interest that the Commission approve the transfer of CLEC Certificate No.4434 from Epicus to Epicus Communications Group, Inc.

Issue 2: Should the Commission acknowledge Epicus, Inc. d/b/a Epicus' request to remove Registration No. TI550 from the register effective on or before December 31, 2005?

Staff Recommendation: Yes, the Commission should acknowledge Epicus, Inc. d/b/a Epicus' request to remove Registration No. TI550 from the register. **(Curry, Scott)**

Staff Analysis: On September 19, 2005, the Commission received a request from Epicus for acknowledgement of removal from the registry of Epicus, Inc. d/b/a Epicus' IXC Registration No. TI550, effective on or before December 31, 2005. Epicus does not have any delinquent IXC regulatory assessment fees, penalties or interest. Therefore, staff recommends that the Commission acknowledge Epicus' request to remove Registration No. TI550 from the register, effective on or before December 31, 2005.

Issue 3: Should the Commission acknowledge the registration of Epicus Communications Group, Inc. as an intrastate interexchange company, effective on or before December 31, 2005?

Staff Recommendation: Yes, the Commission should acknowledge the registration of Epicus Communications Group, Inc. as an intrastate interexchange company. **(Curry, Scott)**

Staff Analysis: On September 19, 2005, Epicus Communications Group, Inc. provided contact information to be acknowledged as a registered intrastate interexchange company. Epicus Communications Group, Inc. will adopt the current tariff that the Commission has on file for Epicus as its own tariff. Staff has determined that the documents received meet the requirements of Sections 364.02(13) and 364.04, Florida Statutes and has assigned IXC Registration No. TK023 to the company. Therefore, staff recommends that the Commission acknowledge the registration of Epicus Communications Group, Inc. as an intrastate interexchange company effective on or before December 31, 2005.

Issue 4: 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 Epicus, Inc. d/b/a Epicus to Epicus Communications Group, Inc.?

Recommendation: Yes, the Commission should approve the waiver of the carrier selection requirement of Rule 25-4.118, Florida Administration Code, in the transfer of customers from Epicus, Inc. d/b/a Epicus to Epicus Communications Group, Inc.

Staff Analysis: Pursuant to Rule 25-4.118, 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 25-24.475(3), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(2), Florida Administrative Code, states:

An IXC may petition for a waiver of any provision of this Part. The waiver shall be granted in whole, granted in Part or denied based on the following:

- (a) The factors enumerated in Section 364.337(4), Florida 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;
- (c) Alternative regulatory requirements for the company which may serve the purposes of this part; and
- (d) Whether the waiver is in the public interest.

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 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.

Epicus Communications Group, Inc. has attested that it will provide for a seamless transition while ensuring that the affected customers will continue to receive all of the features, terms and conditions of service, and rates that the customers currently receive from Epicus. The customers should not experience any interruption of service or incur any switching fees. Staff has reviewed the notice that will be sent to Epicus, Inc. d/b/a Epicus' customers and found it to be adequate. Epicus Communications Group, Inc. has also indicated that the company will work to resolve any complaints that the customers may have against Epicus that have not been resolved prior to the transition.

Epicus, Inc. d/b/a Epicus does not have any outstanding regulatory assessment fees, penalties or interest associated with either its CLEC certificate or IXC registration. The company will pay its 2005 regulatory assessment fees within 30 days after the issuance of the Consummating Order.

Staff believes that in this instance, it is in the public interest to waive the carrier selections 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 local and long distance service. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition. Therefore, staff recommends that the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from Epicus, Inc. d/b/a Epicus to Epicus Communications Group, Inc.

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Issue 5: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Orders are not protested this docket should remain open pending the receipt of payment of the 2005 regulatory assessment fees by Epicus, Inc. d/b/a Epicus for both its CLEC and IXC operations. If Epicus, Inc. d/b/a Epicus fails to pay its 2005 regulatory assessment fees, then this docket should remain open pending further action. **(Scott)**

Staff Analysis: Staff recommends that the Commission take action as set forth in the above staff recommendation.