

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: November 17, 2005

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

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

RE: Docket No. 050837-TI – Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to acquisition of telecommunications assets of American Long Lines, Inc., IXC Registration No. TJ753, by PaeTec Communications, Inc., IXC Registration No. TJ132; and request for removal from register of IXC Registration No. TJ753, effective December 31, 2005.

AGENDA: 11/29/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED:

PREHEARING OFFICER:

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050837.RCM.DOC

Case Background

American Long Lines, Inc. (AMLL) and PaeTec Communications, Inc. (PaeTec) are registered intrastate interexchange telecommunications companies (IXC) in Florida and are wholly owned subsidiaries of PaeTec Corp. Both companies maintain separate administrative and business operations. In an effort to streamline the company operations, PaeTec Corp has decided to consolidate the administrative and business operations of AMLL and PaeTec. On October 19, 2005, staff received notification of the parties intention to merge AMLL into PaeTec, transfer all of AMLL customer's to PaeTec, and to discontinue AMLL's operations in

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Florida. On November 4, 2005, staff received the company's request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code.

AMLL's request to acknowledge cancellation of its IXC registration is being separately handled by staff in accordance with Section 2.07.C of the Administrative Procedures Manual and is not included in this recommendation.

The Commission is vested with jurisdiction in this matter pursuant to 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 customers from American Long Lines, Inc. to PaeTec Communications, Inc.?

Recommendation: Yes, the Commission should approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from American Long Lines, Inc. to PaeTec Communications, Inc. (**Curry, Susac**)

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 IXC's.

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.

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.

PaeTec has attested that it will provide for a seamless transition while ensuring that the affected customers will continue to receive the same level of service that the customers currently receive from AMLL. The customers will not experience any disruptions in service and the rates, terms, and conditions of service will be provided pursuant to the existing contracts assumed by PaeTec. PaeTec will amend its tariff to include a section that will address the AMLL customers

and incorporate their current rates and terms. Staff has reviewed the notice that will be sent to AMLL's customers and found it to be adequate. PaeTec has also indicated that the company will work to resolve any complaints that the customers may have against AMLL that have not been resolved prior to the transition.

AMLL does not have any outstanding regulatory assessment fees, penalties, or interest associated with its IXC registration. The company will pay its 2005 regulatory assessment fees no later than January 30, 2006.

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 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 AMLL to PaeTec.

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Issue 2: 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 Order is not protested this docket should be administratively closed upon receipt of payment of the 2005 regulatory assessment fees by American Long Lines, Inc. If AMLL fails to pay its 2005 regulatory assessment fees, then this docket should remain open pending further action. **(Susac)**

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