

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: April 6, 2006

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

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

RE: Docket No. 060142-TP – Joint petition of Sprint Communications Company, Limited Partnership and Sprint Long Distance, Inc. for waiver of Rule 25-4.118, F.A.C., Local, Local Toll or Toll Provider Selection to allow transfer of certain Sprint Communications Company, Limited Partnership long distance customers to Sprint Long Distance, Inc.

Docket No. 060167-TX – Joint petition of Sprint Communications Company, Limited Partnership and Sprint Long Distance, Inc. for waiver of Rule 25-4.118, F.A.C., Local, Local Toll or Toll Provider Selection to allow transfer of certain Sprint Communications Company, Limited Partnership local and long distance customers to Sprint Long Distance, Inc.

AGENDA: 04/18/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\060142.RCM.DOC

Case Background

On December 15, 2004, Sprint Corporation and Nextel Communications, Inc. entered into a merger agreement wherein Nextel Communications, Inc. would merge with and into a wholly owned subsidiary of Sprint Corporation. The merger closed on August 12, 2005. The corporation's new name became Sprint Nextel Corporation (Sprint). In the merger agreement, Sprint Corporation and Nextel Communications, Inc. agreed to separate the wireline local service operation into an independent, stand-alone operation. In order to facilitate the separation, Sprint formed a new subsidiary, LTD Holding Company (LTD) to control the Sprint operating companies serving local customers. By Order No. PSC-05-0985-PAA-TP, issued October 13, 2005, the Commission approved the transfer of control of the incumbent local exchange telecommunications company (ILEC) Sprint-Florida, Inc. and Sprint Payphone from Sprint-Nextel to LTD Holding Company.

To complete the separation of the Sprint operating companies serving local customers, Sprint is doing two things. First, in Docket No. 060142-TI, it is transferring its intrastate interexchange company (IXC) customers located in its ILEC territories from Sprint Communications Company, Limited Partnership d/b/a Sprint (IXC Registration No. TI793, hereinafter referred to as "Sprint LP") to the long distance company controlled by LTD, Sprint Long Distance, Inc. (IXC Registration No. TK001, hereinafter referred to as "Sprint LD.") Second, in Docket No. 060167-TP, Sprint is transferring its competitive local exchange company (CLEC) customers from Sprint Communications Company Limited Partnership (CLEC Certificate No. 4732, hereinafter referred to as "SCC") to the CLEC controlled by LTD, Sprint Long Distance, Inc. (CLEC Certificate No. 8609, hereinafter referred to as "SLD.") For the SCC customers who are currently provided long distance service by Sprint LP as a bundled packaged, their long distance service is also being transferred to Sprint LD. See Attachment A for a diagram of the corporate structure of the companies involved in the transfers with the acronyms as used in this recommendation. Sprint is seeking waivers of Rule 25-4.118, Florida Administrative Code, for these customer base transfers.

These waivers are being sought to provide the Commission notice of the transfer of assets, for the treatment of customers in a consumer-friendly manner and to allow for a transition to occur in a smooth process protecting both the consumer and the company. Without this waiver, Sprint LD and SLD would be required to obtain signed letters of agency (LOAs) or third party verifications (TPVs) from each customer being transferred. These waivers are also beneficial to the customers as they will not be subject to a loss of service on the date of transfer. Thus, this recommendation addresses the requests for waiver of Rule 25-4.118, Florida Administrative Code, for CLEC and IXC services.

The Commission is vested with jurisdiction in these matters pursuant to Sections 364.02, 364.336, 364.337, and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of certain Sprint Communications Company, Limited Partnership long distance customers to Sprint Long Distance, Inc. in Docket No. 060142-TI?

Recommendation: Yes, the Commission should approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. **(M. Watts/L. Tan)**

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 25-24.475(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.

Sprint LD 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 notices that will be sent to Sprint LP's customers based on the class of the respective customer (business or residential) and found them to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

In addition, Sprint LD stated in its petition that it will be responsible for any outstanding customer complaints after the date of the transfer, but will work with Sprint LP to resolve any complaints regarding service prior to the transfer.

Further, neither Sprint LD nor Sprint LP has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registrations.

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 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 certain Sprint Communications Company, Limited Partnership long distance customers to Sprint Long Distance, Inc. in Docket No. 060142-TI.

Issue 2: Should the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of certain Sprint Communications Company, Limited Partnership local and long distance customers to Sprint Long Distance, Inc. in Docket No. 060167-TP?

Recommendation: Yes, the Commission should approve the request for waivers of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. **(M. Watts/V. McKay)**

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 25-24.475(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.

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.

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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.

Sprint LD and SLD have attested that they 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 notices that will be sent to Sprint LP's/SCC's customers based on the class of the respective customer (business or residential) and found them to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

In addition, Sprint LD/SLD stated in the petition that it will be responsible for any outstanding customer complaints after the date of the transfer, but will work with Sprint LP/SCC to resolve any complaints regarding service prior to the transfer.

Further, neither Sprint LD, SLD, SCC nor Sprint LP has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration or CLEC certification.

Staff believes that in this instance it is appropriate 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 local and long distance services. 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 certain Sprint Communications Company, Limited Partnership local and long distance customers to Sprint Long Distance, Inc. in Docket No. 060167-TP.

Docket Nos. 060142-TI, 060167-TP

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Issue 3: Should these dockets be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency actions files a protest within 21 days of the issuance of the orders, these dockets should be closed upon the issuance of a consummating order. A protest in one docket should not prevent the action in a separate docket from becoming final. **(L. Tan/V. McKay)**

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. A protest in one docket should not prevent the action in a separate docket from becoming final.