

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: November 21, 2006

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

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

RE: Docket No. 060725-TI – Joint Petition by Acceris Management and Acquisition, LLC d/b/a Acceris Communications d/b/a WorldxChange and Cognigen Networks, Inc. for approval to acquire assets and request for expedited approval in connection with transfer of telecommunications customer base from Cognigen Networks, Inc. to Acceris Management and Acquisition, LLC d/b/a Acceris Communications d/b/a WorldxChange and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.

AGENDA: 12/05/06 – 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\060725.RCM.DOC

Case Background

On November 3, 2006, Acceris Management and Acquisition LLC (AMA) and Cognigen Networks, Inc. (CNI), both intrastate interexchange companies (IXCs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. The purpose of filing for the waiver is so CNI can transfer certain assets, including its customer

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accounts and account receivables, to AMA without AMA having to obtain each customer's authorization.

This waiver is 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 consumers and the company. Without this waiver, AMA would be required to obtain signed letters of agency (LOAs) or third party verifications (TPVs) from each customer being transferred. With the waiver, AMA can protect itself from possible complaints of unauthorized carrier changes. This waiver is 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 request for waiver of Rule 25-4.118, Florida Administrative Code, for intrastate interexchange telecommunications services.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 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 Cognigen Networks, Inc.'s customers to Acceris Management and Acquisition LLC?

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/Fudge)**

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.

AMA 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 CNI's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Neither CNI nor AMA has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration. Further, neither AMA nor CNI has any active customer complaints on file with the Commission. CNI and AMA state in the customer notification letter that CNI would be responsible for complaints that originate prior to the transfer. Staff believes that this is acceptable since CNI states in the petition that it desires to keep its registration with the Commission active.

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 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 request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Cognigen Networks, Inc.'s customers to Acceris Management and Acquisition LLC.

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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. **(Fudge)**

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.