

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 1, 2007

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

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

RE: Docket No. 060794-TX – Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to migration of customers of Florida Phone Service Inc. d/b/a Global Telecom Group, holder of CLEC Certificate No. 8630, to FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA, holder of CLEC Certificate No. 5315; and for name change on Certificate No. 5315 to FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA d/b/a Global Telecom.

AGENDA: 02/13/07 – 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\060794.RCM.DOC

Case Background

On December 13, 2006, Florida Phone Service Inc. d/b/a Global Telecom Group (FPS) and FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA (FLATEL), both competitive local exchange telecommunications companies (CLECs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code.

On September 29, 2006, FPS filed for Chapter 11 Bankruptcy, Case No. 06-14905-RAM, with the United States Bankruptcy Court, Southern District of Florida. As a result of its financial condition, FPS will not be able to continue offering telecommunications services in Florida. FPS and FLATEL entered into an agreement whereby FPS' customer base would be transferred to FLATEL. FLATEL seeks the rule waiver so that it will not have to obtain each customer's authorization. With the waiver, FLATEL can protect itself from possible complaints of unauthorized carrier changes (slamming). Customers will benefit because they will not be subject to a loss of service during the transfer.

The Commission is vested with jurisdiction in this matter 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 Florida Phone Service Inc. d/b/a Global Telecom Group's customers to FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA?

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/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 25-24.845, 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.

Staff reviewed the notice that was sent to FPS customers and found it to be adequate. FLATEL has already acquired FPS' customers and attested that the transition was seamless, without disruption to the customers. FLATEL reports that the customers did not experience any rate increase or switching fees.

FLATEL has no outstanding regulatory assessment fees, penalties, or interest associated with its CLEC certificate. Nor does the company have any active customer complaints on file with the Commission.

FPS does have an outstanding debt with the Commission in Docket No. 060033-TX, In Re: Application for certificate to provide competitive local exchange telecommunications service

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by Florida Phone Service, Inc. d/b/a Global Telecom Group. In this docket, FPS sought to obtain a third CLEC certificate after its second had been canceled in Docket No. 050622-TX, In Re: Compliance investigation of Florida Phone Service, Inc., CLEC Certificate No. 7936, for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, for its apparent failure to pay its regulatory assessment fees. Additionally, the company apparently had been operating without a certificate in the interim. FPS offered to remit a monetary of \$5,500 to the Commission to settle these issues. The Commission accepted the company's proposal. However, of that amount, \$1,666.66 remains unpaid. The United States Bankruptcy Court, Southern District of Florida, will ultimately determine the distribution of the company's assets.

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, and based upon FPS' financial condition, customers would have been disconnected.

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 Florida Phone Service Inc. d/b/a Global Telecom Group's customers to FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA.

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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. **(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.