

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: March 29, 2007

TO: Commission Clerk (Cole)

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

RE: Docket No. 070175-TP – Joint petition for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to facilitate transfer of customers from IDT America, Corp. to Access Integrated Networks, Inc.

AGENDA: 04/10/07 – 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\070175.RCM.DOC

Case Background

On March 15, 2007, IDT America, Corp. (IDT) and Access Integrated Networks, Inc. (AIN), both competitive local exchange telecommunications companies (CLECs) and intrastate interexchange companies (IXCs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code.

AIN is acquiring approximately 5,000 customers currently served by IDT. AIN seeks the waiver so that it will not have to obtain each customer's authorization. With the waiver, AIN can protect itself from possible complaints of unauthorized carrier changes (slamming).

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Customers will benefit because they will not be subject to a loss of service during the transfer. IDT will continue providing local and long distance service in Florida.

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 IDT America, Corp.'s customers to Access Integrated Networks, Inc.?

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 25-24.475(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.

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.

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

In addition, IDT and AIN have agreed upon a process to resolve any customer complaints that arise from issues occurring prior to the transfer. Commission staff will direct such complaints to AIN, with a copy to IDT, for resolution. Since IDT will maintain active company operations in Florida, staff believes that this is acceptable.

Further, neither AIN nor IDT 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 customers from IDT America, Corp. to Access Integrated Networks, Inc.

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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.