

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: December 6, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Curry)
Office of the General Counsel (McKay, Poblete)

RE: Docket No. 070682-TI – Joint petition for waiver of carrier selection requirements of Rule 25-4.118, FAC, to permit migration of interexchange customers of BridgeCom International, Inc., ATX Licensing, Inc., and A.R.C. Networks, Inc. a/b/a InfoHighway to Broadview Networks, Inc.

AGENDA: 12/18/07 – 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\070682.RCM.DOC

Case Background

On November 9, 2007, Broadview Networks, Inc. (Broadview) and its sister companies, BridgeCom International, Inc. (BridgeCom), ATX Licensing, Inc. (ATX), and A.R.C. Networks, Inc., d/b/a InfoHighway (InfoHighway) submitted a joint petition for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, (F.A.C.) due to the migration of a portion of the interexchange customers of BridgeCom, ATX, and InfoHighway to Broadview. BridgeCom, ATX, and InfoHighway will transfer 37, 372, and 127 customers, respectively to Broadview.

Docket No. 070682-TI
Date: December 6, 2007

Broadview, BridgeCom, ATX, and InfoHighway are all registered intrastate interexchange telecommunications companies (IXC) that provide interexchange telecommunications services in Florida. This waiver is being sought to prevent Broadview from having to obtain authorization from each customer being transferred to the company. With the waiver, Broadview can protect itself from possible complaints of unauthorized carrier changes (slamming). This waiver is also beneficial to the customers as they will not be subject to a loss of service on the date of transfer.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, and 364.603, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C., to permit migration for the interexchange customers of BridgeCom International, Inc., ATX Licensing, Inc., and A.R.C. Networks, Inc. d/b/a InfoHighway to Broadview Networks, Inc.?

Recommendation: Yes, the Commission should approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C., to permit migration for the interexchange customers of BridgeCom International, Inc., ATX Licensing, Inc., and A.R.C. Networks, Inc. d/b/a InfoHighway to Broadview Networks, Inc. **(Curry, McKay, Poblete)**

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.

Broadview has attested that it will provide for a seamless transition while ensuring that the affected customers will continue to receive the same services and rates that the customers

currently receive from BridgeCom, ATX, and InfoHighway, respectively. Staff has reviewed the notices and have found them to be adequate. Currently, BridgeCom, ATX, and InfoHighway have no outstanding customer complaints. If customer complaints are filed against these companies and are not resolved prior to the transaction, Broadview will resolve all of the outstanding complaints.

Neither Broadview, BridgeCom, ATX, nor InfoHighway have any outstanding regulatory assessment fees associated with their respective 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 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, to permit migration for the interexchange customers of BridgeCom, ATX, and InfoHighway to Broadview.

Docket No. 070682-TI
Date: December 6, 2007

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 administratively upon the issuance of a consummating order. **(McKay, Poblete)**

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 administratively upon the issuance of a consummating order.