

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: August 21, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Kennedy)
Office of the General Counsel (Brooks/Tan)

RE: Docket No. 080542-TI – Joint request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., in transfer of long distance customers from Broadwing Communications, LLC to Telecom Management, Inc. d/b/a Pioneer Telephone, Inc.

AGENDA: 09/04/08 – 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\RCP\WP\080542.RCM.DOC

Case Background

On July 18, 2008, Broadwing Communications, LLC (Broadwing) and Telecom Management, Inc. d/b/a Pioneer Telephone, Inc. (Pioneer), both intrastate interexchange telecommunications companies (IXCs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. The waiver will allow Broadwing to transfer small business and residential customers to Pioneer without requiring Pioneer to obtain authorization from each customer. Pioneer will acquire approximately 1,121 business and 1,100 residential, stand-alone toll customers from Broadwing. Broadwing will

Docket No. 080542-TI

Date: August 21, 2008

retain its IXC registration with the Commission and will continue to provide toll service to customers that purchase local exchange and toll service bundles.

This waiver is being sought to provide the Commission notice of the acquisition of certain Broadwing customers by Pioneer, to treat customers in a consumer-friendly manner, and to allow for a smooth transition protecting both the customers and the company. Without this waiver, Pioneer would be required to obtain signed letters of agency (LOAs) or third party verifications (TPVs) from each customer being transferred. With the waiver, Pioneer 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.

This recommendation addresses the request for waiver of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection. The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02 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 Broadwing Communications, LLC's customers to Telecom Management, Inc. d/b/a Pioneer Telephone, Inc.?

Recommendation: Yes, the Commission should approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. Any waiver approved by the Commission should only apply to customers identified by the petitioners as residential and small business customers. The petitioners should be required to provide the Commission notification of the actual dates when the transactions are consummated. If for any reason the transactions are not consummated, any waiver approved by the Commission shall be null and void. **(Kennedy/Brooks/Tan)**

Staff Analysis: Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's telecommunications services provider 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 IXCs.

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.

Pioneer 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 reviewed the notice that will be sent to Broadwing's customers and found it to

be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Neither Pioneer nor Broadwing has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration. Staff notes that Broadwing was late in paying its 2007 regulatory assessment fees for its IXC registration (Docket 080373-TI) and competitive local exchange certificate (Docket 080471-TX). Even though these two dockets are still active and are being administratively processed by staff, Broadwing has paid all the outstanding penalties and fees.

As of the filing date of this recommendation, Broadwing has no active customer complaints on file with the Commission. Pioneer has one active customer complaint. Pioneer is actively working with Commission staff to resolve this complaint. After the customer transfer is complete, Pioneer will handle all customer complaints, including any complaints involving issues prior to the transfer.

Staff believes that in this instance it is appropriate to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. Requiring Pioneer to obtain each customer's prior authorization in this event, may cause the customers to lose their long distance services should they fail to respond to a request for authorization or neglect to select another carrier. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, staff recommends that the Commission should approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. Any waiver approved by the Commission should only apply to customers identified by the petitioners as residential and small business customers. The petitioners should be required to provide the Commission notification of the actual dates when the transactions are consummated. If for any reason the transactions are not consummated, any waiver approved by the Commission shall be null and void.

Docket No. 080542-TI

Date: August 21, 2008

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. **(Brooks/Tan)**

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.