

State of Florida



## Public Service Commission

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**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** September 17, 2008

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Regulatory Compliance (M. Watts)  
Office of the General Counsel (Morrow, Tan)

**RE:** Docket No. 080546-TI – Joint request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., in transfer of long distance customers from EliteView, LLC d/b/a GroveLine to BCN Telecom, Inc.

**AGENDA:** 09/29/08 – 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\080546.RCM.DOC

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### Case Background

On August 15, 2008, EliteView LLC d/b/a GroveLine (EliteView) and BCN Telecom, Inc. (BCN), 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, for the transfer of long distance customers from EliteView to BCN. At the conclusion of the transaction, EliteView will retain its IXC registration.

BCN is acquiring approximately 35 business customers and 3 residential customers currently served by EliteView. BCN seeks the waiver so it will not have to obtain each customer's authorization. With the waiver, BCN can protect itself from possible complaints of

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unauthorized carrier changes. 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 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 EliteView LLC d/b/a GroveLine's long distance customers to BCN Telecom, 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 the specific set of customers identified in the petition. The petitioners should be required to provide the Commission notification of the actual date when the transaction is consummated. If for any reason the transaction is not consummated, any waiver approved by the Commission shall be null and void. **(M. Watts/Morrow/Tan)**

**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, provides that an IXC may petition for a waiver of any provision of the rules governing IXC's. The Commission can grant in whole, grant in part, or deny the petition for waiver based on the following:

- The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived;
- Alternative regulatory requirements for the company which may serve the purposes of this part; and
- The extent to which a waiver would serve 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.

BCN 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 EliteView's customers and finds it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

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Neither BCN nor EliteView has any outstanding complaints as of the filing date of this recommendation. After the transaction is consummated, EliteView will resolve any customer complaints that arise from issues occurring prior to the transfer. BCN will resolve any customer complaints that occur after the transfer.

Further, neither BCN nor EliteView has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration.

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 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 the specific set of customers identified in the petition. The petitioners should be required to provide the Commission notification of the actual date when the transaction is consummated. If for any reason the transaction is not consummated, any waiver approved by the Commission shall be null and void.

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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. **(Morrow/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.