

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: March 26, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (M. Watts)
Office of the General Counsel (Murphy)

RE: Docket No. 090076-TI – Petition for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to allow Startec Global Operating Company to transfer long distance customer accounts to Americatel Corporation; and request for cancellation of IXC Registration No. TK051, effective on consummation of transaction.

AGENDA: 04/07/09 – 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\090076.RCM.DOC

Case Background

On February 10, 2009, Americatel Corporation d/b/a 1010 123 Americatel d/b/a 10-15-688 AMETEX d/b/a 1 800 3030 123 Americatel Collect (Americatel) and STARTEC Global Operating Company (STARTEC), 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 (F.A.C.). The waiver allows STARTEC to transfer its customer accounts to Americatel without obtaining each customer's authorization. Approximately 6,263 customers are being transferred. STARTEC will not retain its IXC registration with the Commission.

This waiver is being sought to provide the Commission notice of the transfer of assets, for the treatment of customers in a consumer-friendly manner and to allow for a transition to occur in a smooth process protecting both the consumers and the company. Without this waiver, Americatel would be required to obtain signed letters of agency (LOAs) or third party verifications (TPVs) from each customer being transferred. With the waiver, Americatel 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. Thus, this recommendation addresses the request for waiver of Rule 25-4.118, F.A.C., for intrastate interexchange telecommunications services.

In the petition, STARTEC also requested that its IXC registration be canceled upon completion of the transaction. This recommendation addresses only the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. The IXC registration cancellation will be processed in accordance with the requirements of Section 2.07.C.5.i., Administrative Procedures Manual.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02(14)(g) and 364.603, Florida Statutes (F.S.). 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, F.A.C., in the transfer of STARTEC Global Operating Company's customers to Americatel Corporation d/b/a 1010 123 Americatel d/b/a 10-15-688 AMETEX d/b/a 1 800 3030 123 Americatel Collect?

Recommendation: Yes, the Commission should approve the request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. 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/Murphy)**

Staff Analysis: Pursuant to Rule 25-4.118(1), F.A.C., a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), F.A.C., provides in pertinent part 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), F.A.C., Rule 25-4.118, F.A.C., is incorporated into Chapter 25-24, and applies to IXC's.

Rule 25-24.455(2), F.A.C., 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.

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

Neither STARTEC nor Americatel has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration. As of the filing date of this recommendation, Americatel has two active customer complaints on file with the Commission, and STARTEC has no active customer complaints. Americatel is actively working with

Commission staff to resolve these complaints. Americatel stated in its petition that STARTEC customers could continue to use the existing customer service numbers for complaints both before and after the merger. After the merger, Americatel agrees to handle any complaints that are filed by STARTEC customers, including any complaints involving issues prior to the merger and any pending STARTEC complaints.

Staff believes that in this instance it is appropriate to waive the carrier selection requirements of Rule 25-4.118, F.A.C. If prior authorization had been required in this event, customers may have failed to respond to a request for authorization, neglected to select another carrier, and lost their 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, F.A.C., in the transfer of STARTEC Global Operating Company's customers to Americatel Corporation d/b/a 1010 123 Americatel d/b/a 10-15-688 AMETEX d/b/a 1 800 3030 123 Americatel Collect.

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 order should become final upon issuance of a consummating order. This docket should remain open pending notification from the company of the completion of its merger transaction and the cancellation of IXC Registration No. TK051. Upon completion of these actions, this docket should be closed administratively. If, for any reason, the transaction is not consummated, this docket should be closed administratively. **(Murphy)**

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 order should become final upon issuance of a consummating order. This docket should remain open pending notification from the company of the completion of its merger transaction and the cancellation of IXC Registration No. TK051. Upon completion of these actions, this docket should be closed administratively. If, for any reason, the transaction is not consummated, this docket should be closed administratively.