

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: October 29, 2009

TO: Office of Commission Clerk (Cole)

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

RE: Docket No. 090470-TI – Petition for waiver of Rule 25-4.118, F.A.C., to allow CIMCO Communications, Inc. to transfer certain assets and customer base to Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone.

AGENDA: 11/10/09 – 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\090470.RCM.DOC

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Case Background

On October 7, 2009, CIMCO Communications, Inc. (CIMCO) and Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone (Comcast), 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 CIMCO to transfer its customer accounts to Comcast without obtaining each customer's authorization. Approximately 31 business customers are being transferred. CIMCO will not retain its IXC registration with the Commission. However, CIMCO did not request cancellation in the instant petition, but stated it would seek cancellation separately.

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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 the transition to occur in a smooth process protecting both the consumers and the company. Without this waiver, Comcast would be required to obtain signed letters of agency (LOAs) or third party verifications (TPVs) from each customer being transferred. With the waiver, Comcast 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.

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 CIMCO Communications, Inc.'s customers to Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone?

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/Morrow)**

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 IXCs.

Rule 25-24.455(2), F.A.C., provides that an IXC may petition for a waiver of any provision of the rules governing IXCs. 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.

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

Neither CIMCO nor Comcast has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration. As of the filing date of this recommendation, neither Comcast nor CIMCO has any active customer complaints. CIMCO provided a toll-free number in its notification letter for its customers' use for complaints related to issues occurring before the transfer.

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 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 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 CIMCO Communications, Inc.'s customers to Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone.

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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 administratively. **(Morrow)**

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.