

## The Seal of the State of Florida is a circular emblem. It features a central scene with a palm tree, a ship, and a figure. The text "GREAT SEAL OF THE STATE OF FLORIDA" is inscribed around the top, and "IN GOD WE TRUST" is at the bottom.

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COMMISSION  
CLERK

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FPSC-COMMISSION CLERK

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consummation of the proposed transaction, notice will be provided to all affected customers prior to the transfer by means of a billing notice.

Further, NUI Telecom, Inc., is seeking a waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, for the transfer of certain long distance customers from Telcorp Ltd. Company to NUI Telecom, Inc.

There are no past due Regulatory Assessment Fees for Telcorp Ltd. Company or NUI Telecom, Inc. The Commission is vested with jurisdiction in this matter pursuant to Sections 364.337 and 364.603, Florida Statutes.

#### **RECOMMENDATION**

**ISSUE 1:** Should the Commission approve the request for approval of the asset purchase agreement whereby NUI Telecom, Inc. (holder of ALEC Certificate No. 7328 and IXC Certificate No. 4824) will purchase the business and substantially all of the telecommunications assets of Telcorp Ltd. Company (holder of IXC Certificate No. 3160), and request for cancellation of Telcorp Ltd. Company's IXC Certificate No. 3160?

**RECOMMENDATION:** Yes. (T.Williams)

**STAFF ANALYSIS:** Yes, the Commission should approve the asset purchase agreement whereby NUI Telecom, Inc. will purchase substantially all of the telecommunications assets of Telcorp Ltd. Company (holder of IXC Certificate No. 3160) and approve Telcorp Ltd. Company's request for cancellation of IXC Certificate No. 3160. Customers obtaining long distance service from Telcorp Ltd. Company will be transferred to NUI Telecom, Inc. at comparable rates, with no switching fees or interruption of service. Upon consummation of the proposed transaction, notice will be provided

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customers prior to the transfer by means of a billing notice. Staff has reviewed the company's notification and believe it is adequate. Accordingly, staff recommends that the asset purchase agreement, and request for cancellation of Telcorp Ltd. Company's certificate be approved.

**ISSUE 2:** Should the Commission relieve NUI Telecom, Inc. in this instance of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code?

**RECOMMENDATION:** Yes. (T.Williams)

**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 from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service;
- (c) A third party firm has verified the customer's requested change.

Pursuant to Rules 25-24.490 and 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs and ALECs.

Rule 25-24.455(4), Florida Administrative Code, reads as follows:

An interexchange company may petition for a waiver of any provision of this Part. The Commission may grant a waiver to the extent that it determines that it is

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consistent with the public interest to do so. The Commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission may consider:

(a) The factors enumerated in Section 364.337(4), Fla. 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; and

(c) Alternative regulatory requirements for the company may serve the purpose of this Part.

Furthermore, Section 364.337(4), Florida Statutes, provides, in pertinent part: "...a certificated intrastate interexchange telecommunications company may petition the commission for a waiver for some or all of the requirements of this chapter [364], except ss.364.16, 364.335(3), or subsection (5)."

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. The companies have attested that they have provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. The companies have further attested that their customers will receive ample notification of the transfer, and will not experience any interruption of service, rate increase, or switching fees. Further, staff has reviewed the customer notification and believes it is adequate.

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.

Accordingly, staff recommends that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes. 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. **(Teitzman)**

**STAFF ANALYSIS:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.