

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: November 7, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (M. Watts)
Office of the General Counsel (Teitzman, McKay)

M. Watts
AT *vsm* *PCW*

RE: Docket No. 070611-TX – Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C. due to asset purchase agreement, whereby Tele Circuit Network Corporation will acquire substantially all local exchange assets of Deland Actel, Inc., including, but not limited to, Deland's customer accounts in the State of Florida.

AGENDA: 11/20/07 – 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\CMP\WP\070611.RCM.DOC

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Case Background

On September 21, 2007, Tele Circuit Network Corporation (TCNC) and Deland Actel, Inc. (Deland), both competitive local exchange telecommunications companies (CLECs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code.

TCNC is acquiring approximately 2,100 small business and residential customers currently served by Deland. TCNC seeks the waiver so it will not have to obtain each

DOCUMENT NUMBER-DATE

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Docket No. 070611-TX
Date: November 7, 2007

customer's authorization. With the waiver, TCNC can protect itself from possible complaints of unauthorized carrier changes (slamming). 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, 364.336, 364.337, 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 Deland Actel, Inc.'s local customers to Tele Circuit Network Corporation?

Recommendation: Yes, the Commission should approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. (M. Watts/Teitzman/McKay)

Staff Analysis: Pursuant to Rule 25-4.118(l), 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 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to CLECs.

Section 364.337(2), Florida Statutes, states in pertinent part:

A certificated competitive local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be 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.

TCNC 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 Deland's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees. In addition, TCNC has agreed to resolve any customer complaints that arise from issues occurring prior to the transfer. Neither TCNC nor Deland has any outstanding consumer complaints.

Further, neither TCNC nor Deland has any outstanding regulatory assessment fees, penalties or interest associated with its CLEC certification.

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 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, in the transfer of Deland Actel, Inc.'s local customers to Tele Circuit Network Corporation.

Docket No. 070611-TX
Date: November 7, 2007

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 upon the issuance of a consummating order. **(Teitzman/McKay)**

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 upon the issuance of a consummating order.