

State of Florida



# Public Service Commission

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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)

*NW A MW  
VSM at P/cw*

**RE:** Docket No. 070610-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 Actel Wireless, Inc. including, but not limited to Actel'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\070610.RCM.DOC

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### Case Background

On September 21, 2007, Tele Circuit Network Corporation (TCNC) and Actel Wireless, Inc. (Actel), 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 240 customers currently served by Actel. TCNC seeks the waiver so it will not have to obtain each customer's authorization. With the waiver, TCNC

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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 Actel Wireless, 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(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 25-24.845, 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 Actel'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 Actel has any outstanding consumer complaints.

Further, neither TCNC nor Actel 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 Actel Wireless, Inc.'s local customers to Tele Circuit Network Corporation.

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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 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.