

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: EMERGENCY PETITION FOR  
WAIVER OF RULE 25-4.118, F.A.C.,  
CARRIER SELECTION REQUIREMENTS,  
AND RULE 25-4.113, F.A.C.,  
REFUSAL OR DISCONTINUANCE OF  
SERVICE, AND TO BECOME  
CONDITIONAL CARRIER FOR CERTAIN  
LOCAL BUSINESS CUSTOMERS DUE TO  
TERMINATION OF SERVICE BY  
ADELPHIA BUSINESS SOLUTIONS  
INVESTMENT, LLC (HOLDER OF ALEC  
CERTIFICATE NO. 6056), ADELPHIA  
BUSINESS SOLUTIONS INVESTMENT  
EAST, LLC (HOLDER OF ALEC  
CERTIFICATE NO. 8045), AND  
ADELPHIA BUSINESS SOLUTIONS OF  
JACKSONVILLE, INC. (HOLDER OF  
AAV/ALEC CERTIFICATE NO. 2973),  
BY SPRINT-FLORIDA, INCORPORATED.

DOCKET NO. 020948-TP  
ORDER NO. PSC-02-1223-PAA-TP  
ISSUED: September 6, 2002

The following Commissioners participated in the disposition of  
this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING WAIVER  
OF THE CARRIER SELECTION REQUIREMENTS OF RULE 25-4.118 AND  
REFUSAL OR DISCONTINUANCE OF SERVICE REQUIREMENTS OF RULE  
25-4.113, FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action discussed herein is preliminary in  
nature and will become final unless a person whose interests are  
substantially affected files a petition for a formal proceeding,  
pursuant to Rule 25-22.029, Florida Administrative Code.

DOCUMENT NUMBER DATE

09438 SEP-68

FPSC-COMMISSION CLERK

I. CASE BACKGROUND

On September 3, 2002, Sprint-Florida, Incorporated (Sprint) filed an emergency petition for a waiver of Rules 25-4.118 and 25-4.113, Florida Administrative Code, pursuant to Section 120.542, Florida Statutes, and Rule 28-104.004, Florida Administrative Code, for the transition of certain local business customers from Adelphia Business Solutions Investment, LLC, Adelphia Business Solutions Investment East, LLC, and Adelphia Business Solutions of Jacksonville, Inc. (collectively, Adelphia). The request is made because Adelphia's parent company, Adelphia Business Solutions Operations, Inc., has filed for bankruptcy protection.

According to Sprint's emergency petition, Adelphia represented that its customers were notified that Adelphia was discontinuing service and that the customers would need to select another local carrier by September 1, 2002. However, Sprint asserts that its records show that as of August 30, 2002, customers with a total of approximately 2,500 access lines have not requested a change to another local carrier. Adelphia has requested termination of its service by September 23, 2002.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.01 and 364.603, Florida Statutes.

II. ANALYSIS

Rule 25-4.118, Florida Administrative Code, requires customer authorization before submitting a preferred carrier change. Rule 25-4.113, Florida Administrative Code, outlines the conditions under which telecommunication services can be refused or disconnected.

Pursuant to Rule 25-4.118, Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Sprint seeks a waiver of this rule, which requires prior to a carrier change:

- (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; or

(c) A third party firm has verified the customer's requested change.

Adelphia's parent company, Adelphia Business Solutions Operations, Inc., has filed for bankruptcy protection. According to Sprint's emergency petition, Adelphia represented that its customers were notified that Adelphia was discontinuing service and that the customers would need to select another local carrier by September 1, 2002. However, Sprint asserts that its records show that as of August 30, 2002, customers with a total of approximately 2,500 access lines have not requested a change to another local carrier. Adelphia has requested termination of its service by September 23, 2002. Those customers who still have not chosen another local carrier by the 23<sup>rd</sup> will be disconnected.

Sprint asserts that its emergency waiver request meets the standards of Section 120.542, Florida Statutes, and that of the underlying statute 364.01(4), Florida Statutes, "to ensure that basic local telecommunications services are available to all consumers." The petition states that the waiver is necessary to satisfy that objective. Although notices were sent by Adelphia to its business customers, no mention was made of transitioning customers to Sprint if the customers did not choose another local carrier.

In order for Sprint to provide a notice to all affected customers informing them that Adelphia will no longer be providing local service after September 23, 2002, Sprint needs Adelphia's customer contact list. Section 364.24, Florida Statutes, prohibits a telecommunications company from disclosing customer account information except under certain conditions. In Order No. PSC-01-0812-PAA-TP the Commission found that it would be appropriate for an alternative local exchange provider (ALEC) to share this information with an incumbent local exchange company, given the importance of making service available to customers, and directed the ALEC to release the customer account information subject to the protective order. Accordingly, due to the urgency of this situation, Adelphia is hereby ordered to provide a customer contact list, including customer name, billing address and telephone number, subject to protective agreement, by the close of business on September 10, 2002.

The Sprint draft notice states that those customers not choosing another local carrier by the 23<sup>rd</sup> will be switched, without carrier change charges or interruption of service, to Sprint. Adelphia's customers are also informed that continuation of service with Sprint is subject to payment of any prior unpaid balance owed to Sprint, deposits as necessary, and that noncompliance may result in immediate discontinuation of service. The notice also informs them that prior to the switch on September 23, 2002, they may select a carrier other than Sprint.

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 service. Because thousands of customers are affected, a substantial workload increase would be placed on Sprint's customer service department and impede Sprint's ability to respond to these customers, as well as its normal customer requests not related to this massive disconnection of service. Furthermore, granting a waiver of Rules 25-4.118 and 25-4.113, F.A.C., will avoid unnecessary slamming complaints during this transition.

Rule 25-4.113, F.A.C., sets forth the notification requirements prior to disconnection of telecommunications service. Sprint has requested that it be allowed to disconnect service without notification to any transitioned customer that does not comply with Sprint's deposit or payment requirements. The purpose of the rule is to balance the interests of customers and providers by setting forth the conditions under which service may be discontinued or denied. This fairness principle appears to be met in Sprint's petition in that customers are notified of their financial obligations for continuance of service prior to their transition to Sprint. After their transition to Sprint, customers will be notified of any deposit and/or previous unpaid balance due.

Sprint filed its request in accordance with Rule 28-104.004, Florida Administrative Code, Petition for Emergency Variance or Waiver, which provides that persons seeking emergency waivers shall so state in the caption of the petition, shall submit a petition in compliance with Section 120.542(5), Florida Statutes, and shall specifically allege the reasons the situation is an emergency and the waiver is necessary on an expedited time frame. Under Rule 28-104.004, Florida Administrative Code, the notice and comment period

provided for in Section 120.542(6), Florida Statutes, are not required. We find that Sprint has sufficiently shown that this is an emergency situation that warrants processing the request on an expedited basis.

Furthermore, we find that Sprint has sufficiently demonstrated that the waiver meets the purpose of the underlying statutes and is, in fact, necessary to fulfill the purpose of Sections 364.01, 364.03, and 364.19, Florida Statutes.

Accordingly, Sprint's emergency petition for a waiver of Rules 25-4.118 and 25-4.113, Florida Administrative Code, in this instance, is hereby granted.

Based on the foregoing, it is

ORDERED that the petition of Sprint-Florida, Incorporated for waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, is hereby granted. It is further

ORDERED that the petition of Sprint-Florida, Incorporated for waiver of the Refusal or Discontinuance of Service requirements in Rule 25-4.113, Florida Administrative Code, is hereby granted. It is further

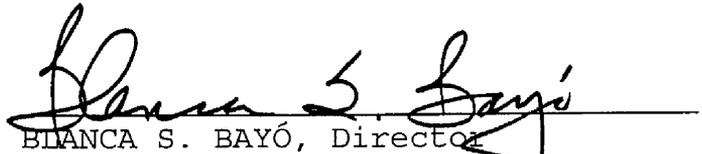
ORDERED that Adelphia shall provide to Sprint-Florida, Incorporated a customer contact list, including customer name, billing address and telephone number, subject to protective agreement, by the close of business on September 10, 2002. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDER NO. PSC-02-1223-PAA-TP  
DOCKET NO. 020948-TP  
PAGE 6

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 6th Day of September, 2002.

  
BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

CLF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of

ORDER NO. PSC-02-1223-PAA-TP  
DOCKET NO. 020948-TP  
PAGE 7

the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 27, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.