

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: September 13, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Curry) *KIC*
Office of the General Counsel (Tan, McKay) *TLT VSM* *plaw*

RE: Docket No. 070050-TI – Compliance investigation of NETECOM, Inc. for
apparent violation of Rules 25-24.470, F.A.C., Registration Required.

Docket No. 070569-TI – Request for waiver of carrier selection requirements of
Rule 25-4.118, F.A.C., due to customer transfer arrangement between Telenational
Communications, Inc. and NETECOM Communications, Inc.

AGENDA: 09/25/07 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED:

PREHEARING OFFICER:

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\070050.RCM.DOC

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Case Background

On October 13, 2006, staff received a customer complaint against NETECOM, Inc. (NETECOM) regarding an unauthorized switch of long distance services. After receiving the complaint, staff determined that NETECOM was not registered and had not filed a tariff with the Commission. Staff made several attempts to contact the company, but the company never responded. However, the company did resolve the customer's complaint at a later date. On January 16, 2007, staff opened Docket No. 070050-TI against NETECOM for its apparent violation of Rule 25-24.470, Florida Administrative Code, Registration Required.

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Docket Nos. 070050-TI, 070569-TI

Date: September 13, 2007

Per Order No. PSC-0278-PAA-TI, issued April 2, 2007, the Commission imposed a penalty in the amount of \$25,000 against NETECOM for its apparent violation of Rule 25-24.470, Florida Administrative Code, Registration Required. On April 23, 2007, the order was protested. On July 6, 2007, NETECOM submitted a proposed settlement offer.

As part of NETECOM's proposed settlement offer, the company proposed to transfer all of its customers to Telenational Communications, Inc. (TNC), IXC Registration No. TJ660. On August 23, 2007, TNC filed a request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code (F.A.C.). Docket No. 070569-TI, was established to address the waiver request, which is included in this recommendation.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02, 364.04, and 364.285, and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission accept NETECOM, Inc.'s proposed settlement offer to cease providing intrastate interexchange telecommunications services in Florida and to transfer all of its current customers to Telenational Communications, Inc.?

Recommendation: Yes, the Commission should accept NETECOM, Inc.'s proposed settlement offer to cease providing intrastate interexchange telecommunications services in Florida and to transfer all of its current customers to Telenational Communications, Inc. **(Curry, Tan)**

Staff Analysis: On July 6, 2007, staff received a proposed settlement offer from NETECOM to resolve the company's apparent violation of Rule 25-24.470, F.A.C. NETECOM currently provides intrastate interexchange telecommunications (IXC) services to 143 customers in Florida. However, the company did not register as an IXC with the Commission or file a tariff as required by Rule 25-24.470, F. A. C. To resolve the matter, NETECOM has proposed the following:

1. Cease operating as an IXC in Florida.
2. Transfer all customers to Telenational Communications, Inc. (IXC Registration No. TJ660).
3. Notify all customers via letter of the transfer.

Staff has reviewed NETECOM's customer letter and found it adequate. Further, NETECOM will provide staff with a report by October 25, 2007, confirming that the company is no longer providing telecommunications services in Florida. NETECOM is aware that in the future if the company elects to provide intrastate interexchange telecommunications services in Florida and fails to register and file a tariff with the Commission, it will be subject to penalties pursuant to Section 364.285, Florida Statutes.

NETECOM's proposed settlement offer is consistent with settlement offers that the Commission has approved in similar dockets. In Docket No. 030964-TI, In Re: Compliance investigation of Tel-Tec, Inc. for apparent violation of Section 364.02, Florida Statutes, Definitions, and Section 364.04, Florida Statutes, Schedules of Rates, Tolls, Rentals, Contracts, and Charges; Filing; Public Inspection, the Commission accepted the company's proposed settlement offer to discontinue providing intrastate interexchange telecommunications services in Florida in lieu of paying the \$25,000 penalty that was imposed against the company for failure to register and file a tariff with the Commission. Because NETECOM's offer is consistent staff believes that the Commission should accept NETECOM, Inc.'s proposed settlement offer to cease providing intrastate interexchange telecommunications services in Florida and to transfer all of its current customers to Telenational Communications, Inc.

Issue 2: Should the Commission grant Telenational Communications, Inc.'s request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C., due to the customer transfer arrangement between Telenational Communications, Inc. and NETECOM, Inc.?

Recommendation: Yes, the Commission should grant Telenational Communications Inc.'s request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C., due to the customer transfer arrangement between Telenational Communications, Inc. and NETECOM, Inc. **(Curry, Tan, McKay)**

Staff Analysis: Pursuant to Rule 25-4.118, 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 25-24.475(3), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(2), Florida Administrative Code, states:

An IXC may petition for a waiver of any provision of this Part. The waiver shall be granted in whole, granted in part or denied based on the following:

- (a) The factors enumerated in Section 364.337(4), Florida 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;
- (c) Alternative regulatory requirements for the company which may serve the purposes of this part; and
- (d) Whether the waiver is 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.

As part of NETECOM's proposed settlement offer, the company agreed to transfer all of its customers to TNC. This waiver is being sought to provide the Commission notice of the transfer for the treatment of customers in a consumer-friendly manner and allows for a transition to occur in a smooth process protecting both the consumer and the company. Without this waiver, TNC would be required to obtain signed letters of authorization (LOAs) or third party

verifications (TPVs) from each customer being transferred. With the waiver, TNC 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. TNC has attested that it will provide for a seamless transition while ensuring that the affected customers will continue to receive the same services and rates that the customers currently receive from NETECOM.

Currently, NETECOM has no outstanding customer complaints. If customer complaints are filed against NETECOM and are not resolved prior to the transaction, TNC has stated that it will resolve all of the outstanding complaints. TNC does not have any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration. 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. 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. Therefore, staff recommends that the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from NETECOM to TNC.

Issue 3: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation, this docket shall remain open until staff has verified that NETECOM is no longer providing intrastate interexchange telecommunications services in Florida. NETECOM must submit a report to staff by October 25, 2007, confirming that the company has ceased operating in Florida and has transferred all of its customers to TNC. If staff determines that NETECOM has complied with the provisions of the Commission's Order, then this docket shall be closed administratively. If NETECOM fails to demonstrate that it has complied with the provisions of the Commission's Order, then Order No. PSC-0278-PAA-TI, will become final and effective upon issuance of a Consummating Order, and the \$25,000 penalty will be assessed payable to the Commission. If the company fails to pay the penalty, it will be forwarded to the Department of Financial Services for further collection efforts. If the penalty is forwarded to the Department of Financial Services, this docket shall be closed administratively. **(Tan, McKay)**

Staff Analysis: Staff recommends that the Commission take action as set forth in the above staff recommendation.