

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF)
ATX LICENSING, INC., FOR A WAIVER OF RULE)
4 (f)(i) OF REGULATION DOCKETS NOS. 10 & 45)
RULES FOR THE PROVISION OF TELECOMMUNICA-) PSC DOCKET NO. 05-169
TIONS SERVICES TO SUBSTITUTE AN IRREVOCABLE)
LINE OF CREDIT FOR A DELAWARE SURETY BOND)
(FILED MAY 6, 2005))

ORDER NO. 6644

This 24th day of May, A.D. 2005, the Commission determines and Orders the following:

1. ATX Licensing, Inc. ("ATX"), has been unable to renew its performance bond with surety, as required by Rule 4(f)(i) of the "Rules for the Provision of Telecommunications Services."¹ ATX says it cannot find any agency operating within Delaware to execute such a surety bond for such amount. It asks for a waiver of the "surety bond" requirement, proposing instead to tender an irrevocable "Letter of Credit" directed at a Missouri bank in the amount of up to \$50,000 (the amount of the bond required by Rule 4(f)(i)). This instrument, ATX says, would offer the same security for its performance as the surety bond required by the Rule. In case of default, the Commission (as the beneficiary of the Letter) could draw on the line of credit.

2. In the unique circumstances of ATX's interexchange situation, the Commission will grant that carrier its requested waiver, and accept its Letter of Credit proposal in lieu of the surety bond required under

¹Such rules were adopted by PSC Findings, Opinion, and Order No. 5833 (Nov. 6, 2001) ("Order No. 5833"). Rule 4(f)(i) requires each applicant to post at least a \$10,000 performance bond with Delaware surety and renew such obligation each year.

Rule 4(f)(i). But this waiver is granted only for a period of one year from this date.

3. ATX is not the only carrier to report that it can find no takers to act as a surety or underwrite the required performance bond. Other carriers, both putative and certificated, have similarly told Staff that they too cannot find financial institutions willing to sign onto such bonds; they too have offered to instead post "letters of credit."² It may be that there is no "market" for the surety bonds called for in Rule 4(f)(i). Or it may be that there is no such market in the case of particular carriers. However, Rule 4(f)(i) calls for the security of a surety bond, and the Commission, in adopting such language, explicitly rejected a request that such bond requirement be subject to a waiver requirement.

4. In lieu of the surety bond required under the Rule, ATX shall provide the irrevocable Letter of Credit as proposed in its request received May 6, 2005.

5. The Commission delegates to Staff the authority to work out the details and mechanics of ATX's Letter of Credit alternative. In particular, Staff is delegated the authority to define, in the first instance, the language to be included in the Letter of Credit to trigger the Commission's ability to draw on the line of credit. If Staff and ATX cannot agree on appropriate language, or any other details, then ATX should petition the Commission to sit to resolve the dispute.

6. The present waiver is limited to one year. In that time, the Commission expects to explore whether the surety bond requirement is the appropriate exclusive instrument to provide security for a carrier's

²See, e.g., Letter of AmeriVision Communications to PSC (rec'd June 14, 2004); Letter of Focal Communications Corporation to PSC (rec'd June 7, 2004).

performance, or whether other financial instruments might provide the same, or similar, protection. Right now, the Commission does not have sufficient knowledge to make the comparison between surety bonds and letters of credit (or any other devices). Perhaps, the Commission might later conclude that other instruments do indeed provide equal, or greater, protection. If so, the Commission can then decide how it might go about allowing carriers to utilize such other instruments. As counsel suggests (see n. 5), it may require a revision of the present rules. Once other alternatives are found acceptable, then not only ATX but other carriers can utilize them.

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons stated in the body of this Order, the requirements of Rule 4(f)(i) of the "Rules for the Provision of Telecommunications Services" (adopted by PSC Findings, Opinion, and Order No. 5833 (Nov. 6, 2001) are hereby waived as requested by ATX Licensing, Inc., filed on May 6, 2005. In lieu of the surety bond required by that Rule, ATX Licensing, Inc., shall submit an irrevocable Letter of Credit as outlined in its letter waiver application received May 6, 2005. This waiver shall apply for one-year from the date of this Order.

2. That Commission Staff is delegated the authority to superintend the details and mechanics of the Letter of Credit allowed by Ordering paragraph 1.

3. That the Staff shall explore with telecommunications carriers and other interested persons whether Rule 4(f)(i) of the "Rules for the Provision of Telecommunications Services" should be amended or otherwise modified to allow carriers to submit other forms of financial

instruments to secure their performance. After such consultations, Staff shall submit a Report on the issue with its recommendations.

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary