

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint application for approval of indirect transfer of control of telecommunications facilities by Smart City Finance LLC and Hargray-Smart City Acquisition Co., LLC.

DOCKET NO. 080529-TP  
ORDER NO. PSC-08-0793-PAA-TP  
ISSUED: December 2, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING INDIRECT TRANSFER OF CONTROL  
OF TELECOMMUNICATIONS FACILITIES

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.

**I. Case Background**

On July 11, 2008, Smart City Finance LLC and Hargray-Smart City Acquisition Co., LLC (Hargray) executed a Purchase Agreement whereby Hargray will purchase Smart City Finance LLC's ownership interest in Smart City Telecommunications LLC d/b/a Smart City Telecom (Smart City Telecom) and will become its new parent.

On August 8, 2008, Smart City Finance LLC and Hargray, along with Smart City Telecom (together, the Applicants), submitted a joint application requesting approval for the indirect transfer of control of Smart City Telecom from Smart City Finance LLC to Hargray. In addition, the Applicants request that we find that the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, to be inapplicable.

Although not mentioned by the Applicants in their filing, Smart City Telecom is designated as an eligible telecommunications carrier (ETC). We need not address Smart City

DOCUMENT NUMBER-DATE

11093 DEC-28

FPSC-COMMISSION CLERK

Telecom's designation as an ETC in this proceeding. Smart City Telecom will continue as the telecommunications services provider after the transfer is consummated, and retain its designation as an ETC. Thus no action is required.

Smart City Telecom is currently a wholly-owned subsidiary of Smart City Finance LLC and is authorized by this Commission pursuant to Incumbent Local Exchange Telecommunications Company (ILEC) Certificate No. 1971 to provide local exchange telecommunications services, and pursuant to Pay Telephone Service Company (PATS) Certificate No. 7664 to provide pay telephone services. Pursuant to Section 364.33, Florida Statutes, Certificate of Necessity Prerequisite to Construction, Operation, or Control of Telecommunications Facilities, Commission approval is required for the transfer of control of Smart City Telecom's ILEC and PATS facilities from Smart City Finance LLC to Hargray.

Pursuant to the Proposed Agency Action Order No. PSC-00-2230-PAA-TP, issued by this Commission on November 22, 2000, Smart City Telecom acquired the assets, including the ILEC Certificate No. 1971, of Vista-United Telecommunications. Order No. PSC-00-2230-PAA-TP was made final and effective by the issuance of Consummating Order No. PSC-00-2415-CO-TP by this Commission on December 18, 2000. Since that time, Smart City Telecom has been providing local exchange, interexchange, and high-speed data services to residential and business customers in Celebration, Lake Buena Vista, Little Lake Bryan, Bay Lake, and Walt Disney World. We have received a total of five customer complaints against Smart City Telecom, the last of which was received on January 8, 2003. Smart City Telecom appears to have consistently complied with our rules and orders, including timely payment of its Regulatory Assessment Fees.

Smart City Telecom is also registered as an Intrastate Interexchange Telecommunications Company (IXC) and holds IXC Registration No. TJ471. The Applicants are not seeking our approval for the indirect transfer of control of Smart City Telecom's IXC facilities. Pursuant to Sections 364.02(14)(g) and 364.011(1), Florida Statutes, IXCs are exempt from the requirements of Section 364.33, Florida Statutes. In addition, Smart City Finance LLC is the parent of Smart City Solutions, LLC d/b/a Smart City Communications, which holds Competitive Local Exchange Telecommunications Company (CLEC) Certificate No. 8030. Like IXCs, CLECs are exempt from the requirements of Section 364.33, Florida Statutes, pursuant to Section 364.337(2), Florida Statutes.

Hargray is a Delaware limited liability company formed for the purpose of acquiring Smart City Telecom and other properties under the control of Smart City Finance LLC. Hargray is a wholly-owned subsidiary of Hargray-Smart City Holdings LLC, which through a second tier subsidiary Hargray Communications Group, Inc.<sup>1</sup>, provides telecommunications services in South Carolina and Georgia. The company's operations include traditional telephone carrier services as well as cable television, wireless telephone, and Internet services. Hargray Communications Group, Inc. currently serves approximately 84,274 access lines, 33,108 data subscribers, 27,801 video subscribers, and 7,271 wireless subscribers in South Carolina and

---

<sup>1</sup> Hargray Communications Group, Inc. is a subsidiary of Hargray Holdings, LLC.

Georgia. Upon closing of a corporate restructuring, Hargray-Smart City Holdings LLC will be wholly-owned by Quadrangle Capital Partners II LP, Quadrangle Capital Partners II-A LP and Quadrangle Select Partners II LP (collectively, Quadrangle).

Quadrangle is a private equity fund managed by affiliates in the New York-based investment firm, Quadrangle Group LLC. Quadrangle invests in media and communications companies through separate private and public investment vehicles. Since 2000, Quadrangle has completed over 20 investments in the communications industry, including investment in rural local exchange carriers, competitive local exchange carriers, cable operators and wireless providers. One example of Quadrangle's investments is NuVox Communications, Inc., holder of CLEC Certificate No. 5638 and IXC Registration No. TJ975 in Florida.

## **II. Jurisdiction**

### **A. Section 364.33, Florida Statutes**

We have authority under Section 364.33, Florida Statutes, to approve an application for transfer of control. We note that this provision does not provide specific standards which we may follow in making our decision to approve a transfer of control. However, we believe that Section 364.01, Florida Statutes, implies a public interest standard that we should follow when deciding whether to approve or deny transfers of control, among other transactions.

The legislative intent in Section 364.01, Florida Statutes, is clear: we are to exercise our jurisdiction in order to protect "the public health, safety, and welfare" as it relates to basic local telecommunications services. Based on the intent of the Florida Legislature, we should base our decisions on whether to grant applications for transfer of control on whether they satisfy the public interest. To that end, we have reviewed the management, technical, and financial capability of the acquiring entity.

### **B. Waiver of Rule 25-4.118, Florida Administrative Code**

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 . . . .

The Applicants request that we find that the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, to be

inapplicable. The requirements of Rule 25-4.118, Florida Administrative Code, apply when there is a change in the provider of a customer's telecommunications services.

In this instance, Smart City Telecom is the company that is currently registered with the Secretary of State, and is the Commission-certificated entity that currently provides regulated telecommunications services to Florida customers. Florida customers will not be subject to a change of their telecommunications services provider. Because the provider will not change, a waiver of Rule 25-4.118, Florida Administrative Code, is not required.

C. FCC Activity – WC Docket No. 08-170<sup>2</sup>

We have monitored the status of the Applicants' Domestic Section 214 Application filed with the FCC on August 11, 2008. The FCC established a streamlined pleading cycle, announced in DA 08-2063, released on September 9, 2008. On October 14, 2008, the DOJ, National Security Division, requested that the FCC defer action on WC Docket No. 08-170.

Our staff contacted the Applicants, as well as the FCC, to obtain an explanation for the deferral. According to the FCC, the DOJ was reviewing the federal application because one of the eight managing members of Quadrangle is an Irish national and holder of a U.S. green card. In a teleconference on October 30, 2008, a DOJ representative informed us that all applications in which foreign nationals are identified as managing members or owners require the DOJ's review. At the time of the teleconference, the DOJ had not completed its review.

In a November 3, 2008 letter to the FCC, the DOJ officially withdrew its request that the FCC defer action in WC Docket No. 08-170 and acknowledged that it has no objection to the application. On November 12, 2008, the FCC issued DA 08-2480 granting authorization for the transfer of control of Smart City Telecommunications LLC and Smart City Solutions, LLC from Smart City Finance LLC to Hargray-Smart City Acquisition Co., LLC.

III. Analysis

A. Management Capability

Smart City Telecom is now a wholly-owned subsidiary of Smart City Finance LLC and is authorized by this Commission to provide local exchange telecommunications services and pay telephone services. With this approval of the Applicants' request for indirect transfer of control, Smart City Telecom will not change or become a new entity. Smart City Telecom will become a subsidiary of Hargray.

Smart City Telecom will continue operating in Florida and will be led by the same management team that currently supports the day-to-day management of the telecommunications operations. Oversight will be provided by Hargray's executive management team. Each

---

<sup>2</sup> Domestic Section 214 Application filed for the transfer of control of Smart City Telecommunications LLC and Smart City Solutions, LLC from Smart City Finance LLC to Hargray-Smart City Acquisition Co., LLC.

member of the executive management team demonstrates varying levels of prior experience in the management and operations of telecommunications companies, including wireline and wireless. Based on these factors, the Applicants claim that Smart City Telecom will have the same management capabilities to provide service as it had under the control of Smart City Finance LLC.

The Applicants have stated that because the transaction only effects a change in the identity of Smart City Telecom's parent, the transaction will be seamless to Florida customers. The indirect transfer of control will have no effect on the rates, terms, or conditions of service provided by Smart City Telecom. The Applicants claim that acting through its existing management, Smart City Telecom will continue to provide the same services to its customers in Florida, pursuant to the same tariffs, as it currently provides. No Florida assets will be transferred from Smart City Telecom, and Smart City Telecom will continue to own and operate its Florida telecommunications facilities.

On September 30, 2008, our staff participated in a conference call with staff of the South Carolina Public Service Commission seeking information on Hargray Communications Group, Inc.'s performance in South Carolina. The feedback received by our staff was that Hargray Communications Group, Inc. was very responsive to requests from the South Carolina Public Service Commission, consumer complaints were very few in number with no memory of any recent complaints, and that the company made timely payments into the state's Universal Service Fund. Hargray Communications Group, Inc. was acquired by Quadrangle in June 2007 and based on feedback provided by the staff of the South Carolina Public Service Commission, there has been no negative impact on Hargray Communications Group, Inc.'s quality of service it provides to business and residential customers in its service territory.

On October 28, 2008, the Applicants submitted a letter to this Commission that they received from Walt Disney World Co. (Disney). The letter, signed by Mr. John McGowan, Executive Counsel, represents Disney's approval of the transfer of control of telecommunications facilities by Smart City Finance LLC and Hargray-Smart City Acquisition Co., LLC. Sales of telecommunications services by Smart City Telecom to Disney, and its affiliates and subsidiaries operating at the WALT DISNEY WORLD® Resort, collectively represent the bulk of Smart City Telecom's revenue stream.

B. Technical Capability

The Applicants have stated that no assets will be transferred from Smart City Telecom and that Smart City Telecom will continue to own and operate its Florida telecommunications facilities. The current technical staff will be retained and will continue to provide operation and maintenance support of the facilities. The same networks that currently serve Florida customers will continue to serve them after the transfer of control has been completed. Smart City Telecom's past performance with respect to our service standards indicates that the quality of service provided in Florida is acceptable. Customer complaints are few, with the last complaint received by this Commission on January 8, 2003.

The Applicants assert that the proposed transaction will provide Hargray Communications Group, Inc. and Smart City Telecom access to each other's network capabilities, technical strengths, and complementary services, which together are expected to strengthen their abilities to expand their offerings and provide more advanced telecommunications services to a broader customer base. The Applicants also provide that the proposed acquisition will enable Smart City Telecom to offer innovative products and to further strengthen both companies' marketplace positions to the benefit of consumers. The Applicants state that the transaction will be conducted in a manner that will be virtually transparent to the customers of Smart City Telecom.

C. Financial Capability

The Applicants state that Hargray has the requisite financial capability to fully support its operations subsequent to the transfer of control. Hargray, Smart City Finance LLC, and Hargray Holdings LLC (Hargray Holdings) are privately held corporations. Their financial statements are not filed with the Securities and Exchange Commission or generally available for public inspection. The Applicants submitted financial information in response to our staff's data requests.

We believe Hargray will have a non-investment grade bond rating, i.e., no higher than BB+. Standard & Poor's Ratings Service assigned Hargray Holdings a corporate bond rating of B. Moody's Investor Service (Moody's) assigned Hargray Communications Group, Inc., a corporate bond rating of B2. Moody's reported that the acquisition of Smart City does not impact Hargray Communications Group Inc.'s bond ratings at this time.

The Applicants state that Hargray Holdings' non-investment grade debt rating is consistent with the ratings of other communications companies such as Fairpoint Communications, Inc, NuVox Communications, Paetec Holdings Corp., and Qwest. We find this statement to be accurate. The Applicants explain that the past success of Hargray Holdings demonstrates the reasonableness of its debt structure. According to the Applicants, the debt structure of Hargray will be more conservative (less debt compared to equity) than the debt structure of Hargray Holdings.

Hargray has received a debt commitment letter from CoBank, ACB, Royal Bank of Canada and General Electric Capital Corporation (Lenders) pursuant to which the Lenders have agreed to provide Hargray with credit facilities in the form of a senior secured term loan (Term Loan) and a senior secured revolving loan (Revolver). The proceeds from the Term Loan will be used to finance the acquisition. The proceeds from the Revolver will be used for working capital, capital expenditures, and for other general corporate purposes.

Hargray claims that it will have substantial free cash flow to invest in its operations or accelerate its debt payments. Hargray estimates that it will have 33 percent of its EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) to pay its interest expense, 30 percent of its EBITDA for capital expenditures, and 19 percent of its EBITDA remaining for further investment or acceleration of debt payments. Hargray states that the impact of its debt

structure on its free cash flows is comparable to that of other telecommunications companies. We concur that Hargray's free cash flow, expressed as a percentage of EBITDA, appears to be comparable to other telecommunications companies.

The Applicants provided us with information that they believe shows Hargray will have the necessary cash flow to fund its operations, fund capital expenditures, and meet its debt service. Given the Applicants' representations regarding sufficient cash flow and commitments for debt financing from major banks, we find that Hargray has the necessary financial capability to support its operations.

#### **IV. Decision**

Based upon our analysis of the management, technical, and financial capabilities of the acquiring company, we find that the transfer of control of Smart City Telecom from Smart City Finance LLC to Hargray would be in the public interest.

We find it appropriate to approve the joint application for approval of the indirect transfer of control of Smart City Telecommunications LLC d/b/a Smart City Telecom, holder of ILEC Certificate No. 1971 and PATS Certificate No. 7664, from Smart City Finance LLC to Hargray-Smart City Acquisition Co., LLC, and acknowledge that a waiver of Rule 25-4.118, Florida Administrative Code, is not required.

At the conclusion of the protest period, if no protest is filed, this docket shall be closed administratively upon notification by the Applicants that the transfer of control either has or has not been consummated.


Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application for approval of the indirect transfer of control of Smart City Telecommunications LLC d/b/a Smart City Telecom, holder of ILEC Certificate No. 1971 and PATS Certificate No. 7664, from Smart City Finance LLC to Hargray-Smart City Acquisition Co., LLC is approved and that a waiver of Rule 25-4.118, Florida Administrative Code is not required. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of this Proposed Agency Action Order. It is further

ORDERED that if the Commission's Order is not protested, this docket shall be closed administratively upon notification by the Applicants that the transfer of control either has or has not been consummated.

By ORDER of the Florida Public Service Commission this 2nd day of December, 2008.

  
\_\_\_\_\_  
ANN COLE  
Commission Clerk

( S E A L )

JLM

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 23, 2008.

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.