

State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: March 29, 2007

TO: Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Pruitt) *VS m PK*
Office of the General Counsel (McKay) *VS m PK*

RE: Docket No. 070154-TL – Joint petition of BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Windstream Florida, Inc. to transfer territories in Alachua County and to amend certificates.

AGENDA: 04/10/07 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: ~~Carter~~ *Administrative ac*

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\070154.RCM.DOC

Case Background

On March 9, 2007, BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T) and Windstream Florida, Inc., f/k/a Alltel Florida, Inc., (Windstream) filed a joint petition seeking approval to transfer a portion of AT&T's territory to Windstream. The petition was filed on behalf of the affected customers.

The territory in question consists of a small section of Haile Estates, east of Interstate 75 in Alachua County that has been served by AT&T via an overhead cable that crosses the interstate. The present boundaries were drawn many years ago and based on section lines, which are survey measurements that define a land unit of one square mile. The proposed changes will

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recognize Interstate 75 as a logical boundary. The petition states that Windstream can provide service to the territory in a cost-effective and safe manner without crossing the interstate. In addition, the affected customers will be able to subscribe to Windstream's Digital Subscriber Line service which is not available to them through AT&T.

The Commission is vested with jurisdiction in this matter pursuant to Section 364.335, Florida Statutes. Petitions for territorial transfers are governed by Rule 25-4.005, Florida Administrative Code, which is attached to this recommendation.

Discussion of Issues

Issue 1: Should the joint petition filed by BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Windstream Florida, Inc. for approval of a territorial agreement to modify the Gainesville Exchange and the Alachua Exchange boundaries and to amend the companies' local exchange certificates be approved?

Recommendation: Yes. The joint petition filed by AT&T and Windstream should be approved because it meets the requirements of Rule 25-4.005, Florida Administrative Code (F.A.C.), Transfer of Certificate of Public Convenience and Necessity as to All or Portion of Service Area. (Pruitt)

Staff Analysis: The joint petition was submitted to this Commission at the request of the four affected residential customers. The petition includes letters from the customers requesting the change because of their desire to subscribe to Windstream's Digital Subscriber Line service that is not available to them through AT&T. The petition states that the customers are aware of changes in their local calling scopes and rates due to the transfer, and do not object to taking service from Windstream's current tariff.

In compliance with Rule 25-4.005, F.A.C., the petition states AT&T does not hold any deposits from the customers requesting the transfer, there are no pending applications for service in the subject territory, and no financial exchange has or will be given for the transfer of the territory in question.

Rule 25-4.005, F.A.C., also requires a notice of intent to file a joint petition be provided to the Commission, Public Counsel, and the governing bodies of any affected municipalities or counties. A sworn affidavit stating the notice has been provided is attached to the petition. This Commission received its notice on February 15, 2007. The rule also requires the publication of a notice in an area newspaper on two separate occasions, at least two weeks prior to filing the petition. A second sworn affidavit is attached to the petition stating that the notice was published in the Gainesville Sun on January 28 and 29, 2007. A copy of the newspaper notice is also included with the petition.

Accordingly, staff recommends that the joint petition to modify the exchange boundaries of AT&T's Gainesville Exchange and Windstream's Alachua Exchange be approved. AT&T and Windstream should file tariffs reflecting the exchange boundaries changes within 60 days of the issuance date of the consummating order.

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Issue 2: Should this docket be closed?

Recommendation: Yes. 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 upon the issuance of a consummating order. (McKay)

Staff Analysis: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.

25-4.005 Transfer of Certificate of Public Convenience and Necessity As to All or Portion of Service Area.

(1) Request for approval by the Commission of transfer of any certificate of public convenience and necessity (or portion thereof) shall be made by joint petition of the certificate holder and transferee after reasonable notice has been given to all subscribers affected by the proposed transfer. Requests for approval shall be accompanied by an affidavit that notice of intention to file the petition has been given:

(a) By mail or personal delivery to the governing bodies of the counties and municipalities affected, to the public counsel, and to the Commission,

(b) By a legal advertisement in a newspaper of general circulation in the area affected and published on two (2) separate occasions at least two (2) weeks prior to the filing of the joint petition on the proposed transfer, and

(c) By written notice subject to Commission approval, issued to each subscriber in the area to be transferred concurrent with the filing of the petition.

(2) Upon approving a transfer of certificate, or portion thereof, the Commission will cancel same and reissue in the name of the transferee or amend the description of the service area or both.

(3) Such joint petitions shall include detailed descriptions of the affected boundaries; the number of subscribers, if any, in each petitioned area; changes in rates; service being provided by either petitioner in areas to be transferred; pending applications for service held by either petitioner; changes in calling scope; customers to be transferred; deposits and deposit interest; any financial exchange or consideration for the proposed change, and a list by name and telephone number of all customers who will be exempt from the proposed change.

(4) Any subscriber or group of subscribers of a telephone company may petition the Commission for transfer from the service area of such telephone company to that of another telephone company serving contiguous territory.

(5) If a customer survey is conducted by a telephone company among customers affected by the proposed transfer, return postage shall be paid by the company serving the affected customer and survey ballots shall be returnable to the Public Service Commission, Attention: Division of Competitive Markets and Enforcement, for tabulation.

Specific Authority 350.127(2) FS. Law Implemented 364.335 FS. History—New 12-1-68, Amended 5-4-81, Formerly 25-4.05, Amended 9-16-99.