

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint application for approval for name change and transfer of Certificate No. 5618 of Focal Communications Corporation of Florida to Broadwing Communications, LLC; approval for Focal Communications Corporation of Florida to abandon services; and notification of the transfer of assets and customers of Focal Communications Corporation of Florida to Broadwing Communications, LLC.

DOCKET NO. 040823-TX  
ORDER NO. PSC-04-1039-PAA-TX  
ISSUED: October 25, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
LILA A. JABER  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

ORDER GRANTING APPROVAL FOR NAME CHANGE AND TRANSFER OF ASSETS,  
CERTIFICATE AND CUSTOMER BASE

**Case Background**

On August 09, 2004, this Commission received a petition from Robert E. Stup, Jr. and Michelle S. Cadin, Mintz Levin Cohn Ferris Glovsky and Popeo, PC, on behalf of their clients Corvis Corporation and its affiliates, requesting approval for a name change and transfer of Certificate No. 5618 of Focal Communications Corporation of Florida to Broadwing Communications, LLC; and for Focal Communications Corporation of Florida to abandon services. In addition, the petition provided notification of the transfer of assets and customers of Focal Communications Corporation of Florida to Broadwing Communications, LLC, due to a corporate restructuring. The proposed consolidation is intended to simplify Corvis' corporate structure resulting in significant administrative and operational efficiencies.

The Commission is vested with jurisdiction in the transfer of customers from Focal Communications Corporation of Florida to Broadwing Communications, LLC, pursuant to Section 364.345 and 364.603, Florida Statutes.

**Analysis**

Pursuant to Rule 364.345 (2), Florida Statutes, a telecommunications company may not sell, assign, or transfer its certificate or any portion thereof without (a) a determination by the

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commission that the proposed sale, assignment, or transfer is in the public interest; and (b) the approval of this Commission.

After a review of the petition, the proposed transaction would not adversely affect the services currently provided by Focal Communications Corporation of Florida since Broadwing Communications, LLC would continue to provide services without interruption. Further, Broadwing Communications, LLC would adopt Focal Communications Corporation of Florida's existing price list.

We find that in this instance it is in the public interest to grant the name change and transfer of Certificate No. 5618 from Focal Communications Corporation of Florida to Broadwing Communications, LLC.

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 . . .

Pursuant to Rule 25-24.490, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(4), Florida Administrative Code, states in part:

An interexchange company may petition for a waiver of any provision of this Part. The Commission may grant a waiver to the extent that it determines that it is consistent with the public interest to do so. The commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission may consider:

- (a) . . .
- (b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived; and
- (c) Alternative regulatory requirements for the company may serve the purpose of this Part.

ORDER NO. PSC-04-1039-PAA-TX  
DOCKET NO. 040823-TX  
PAGE 3

Broadwing Communications, LLC has attested that it has provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Our staff has reviewed the notice that was sent to Focal Communications Corporation's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

We find 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, we find that granting this waiver will avoid unnecessary slamming complaints during this transition.

Further, Focal Communications Corporation of Florida and Broadwing Communications, LLC do not have any outstanding regulatory assessment fees, penalties or interest.

Therefore, we find it appropriate that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission, that we hereby approve the name change and transfer of Certificate No. 5618 from Focal Communications Corporation of Florida to Broadwing Communications, LLC. It is further,

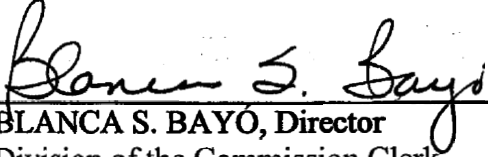
ORDERED that we hereby find it appropriate that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance. It is further,

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

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

ORDER NO. PSC-04-1039-PAA-TX  
DOCKET NO. 040823-TX  
PAGE 4

By ORDER of the Florida Public Service Commission this 25th day of October, 2004.

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

( S E A L )

JPR

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 15, 2004.

ORDER NO. PSC-04-1039-PAA-TX  
DOCKET NO. 040823-TX  
PAGE 5

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.