

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition of MCG Capital Corporation, IDS Telcom Corp. and IDS Telcom LLC for approval for name change and transfer of CLEC Certificate No. 5228 from IDS Telcom LLC to IDS Telcom Corp.; for waiver of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection in connection with the sale of customer-based and other assets from IDS Telcom LLC to IDS Telcom Corp.; and for acknowledgment of registration of IDS Telcom Corp. as intrastate interexchange telecommunications company effective February 8, 2005.

DOCKET NO. 050111-TP
ORDER NO. PSC-05-0251-PAA-TP
ISSUED: March 4, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING TRANSFER OF AND NAME CHANGE ON CLEC CERTIFICATE; AND
GRANTING WAIVER OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE

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 February 8, 2005, we received a petition from MCG Capital Corporation, IDS Telcom Corp. and IDS Telcom LLC requesting approval for a name change and transfer of competitive local exchange telecommunications company (CLEC) Certificate No. 5228 of IDS Telcom LLC (Old IDS) to IDS Telcom Corp. (New IDS); and for New IDS to register with the Commission as an interexchange telecommunications company (IXC). In addition, the petition requested waivers of Rule 25-4.118, Florida Administrative Code, due to the transfer of assets and

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customers (local and long distance) of Old IDS to New IDS. This Order deals only with the name change, transfer, and waiver request. The IXC registration is already deemed effective.

We are vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, 364.345 and 364.603, Florida Statutes.

II. Name Change On and Transfer of Certificate No. 5228

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 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, we find that the proposed transaction would not adversely affect the services currently provided by "Old IDS" since "New IDS" would continue to provide services without interruption. Further, "New IDS" will continue to provide service with the same rates, terms, and conditions of service as the services those customers currently receive.

Therefore, based on the foregoing, we find that, in this instance, it is in the public interest to approve the name change and transfer of Certificate No. 5228 from IDS Telcom LLC to IDS Telcom Corp.

III. Waiver of Rule 25-4.118, Florida Administrative Code, for Transfer of Long Distance and Local Service Customers

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.

The new company has attested that it will provide for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Having reviewed the notice that will be sent to the former company's customers, we find it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Thus, in this instance, we find that 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, granting this waiver will avoid unnecessary slamming complaints during this transition.

We note that "Old IDS" does not have any outstanding IXC regulatory assessment fees, penalties or interest, and has stated it intends to pay its 2005 regulatory assessment fees within 60 days of the issuance of the Consummating Order.

With regard to the CLEC customers, we note that Section 364.337(2), Florida Statutes, states, in pertinent part:

A certificated competitive local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be 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 provision of the Florida Statutes that this Commission is authorized to waive, according to Section 364.337(2), Florida Statutes.

"New IDS" has attested that it will provide for a seamless transition for the local service customers while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Having reviewed the notice to be sent to the local service customers, we find that it is also adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Thus, we find it is also in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, as applicable to the local service customers. 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, granting this waiver will avoid unnecessary slamming complaints during this transition.

As with the IXC, "Old IDS" does not have any outstanding CLEC regulatory assessment fees, penalties or interest, and has stated it intends to pay its 2005 regulatory assessment fees within 60 days of the issuance of the Consummating Order.

In conclusion, we hereby waive the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, in this instance, as applicable to both the long distance and local customers.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the request for transfer of and name change on Certificate No. 5228 from IDS Telcom LLC to IDS Telcom Corp., is hereby approved. It is further

ORDERED that CLEC Certificate No. 5228 shall be amended to reflect that IDS Telcom Corp. is the holder of the certificate. It is further

ORDERED that this Order shall serve as IDS Telcom Corp.'s certificate and should be retained by the company as proof of certification. It is further

ORDERED that the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, are waived with regard to this transaction. 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 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 become final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 4th day of March, 2005.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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 March 25, 2005.

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.