

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint request of FDN, LLC d/b/a FDN Communications, holder of CLEC Certificate No. 5715 and IXC Registration No. TK146, and NuVox Communications, Inc., holder of CLEC Certificate No. 5638 and IXC Registration No. TJ975, for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to allow transfer of customers from FDN to NuVox due to an internal corporate reorganization whereby FDN and NuVox will be consolidated into a single operating subsidiary.

DOCKET NO. 070630-TP
ORDER NO. PSC-07-0876-PAA-TP
ISSUED: October 31, 2007

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING
FDN, LLC d/b/a FDN COMMUNICATIONS AND
NUVOX COMMUNICATIONS, INC.'S JOINT
PETITION FOR WAIVER OF CARRIER SELECTION REQUIREMENTS
AND TRANSFER OF CUSTOMERS

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.

Case Background

On September 28, 2007, FDN, LLC d/b/a FDN Communications (FDN) and NuVox Communications, Inc. (NuVox), both competitive local exchange telecommunications companies (CLECs) and intrastate interexchange companies (IXCs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, for the

DOCUMENT NUMBER DATE

09879 OCT 31 8

FPSC-COMMISSION CLERK

transfer of customers from FDN to NuVox due to an internal corporate reorganization. Both FDN and NuVox are wholly-owned subsidiaries of NuVox, Inc. At the conclusion of the transaction, FDN will request cancellation of its CLEC certificate and IXC registration.

NuVox is acquiring approximately 54,000 customers currently served by FDN. NuVox seeks the waiver so it will not have to obtain each customer's authorization. With the waiver, NuVox can protect itself from possible complaints of unauthorized carrier changes. Customers will benefit because they will not be subject to a loss of service during the transfer.

This Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.335, 364.336, 364.337, 364.345, and 364.603, Florida Statutes.

Analysis

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 25-24.475(3), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(2), Florida Administrative Code, states:

An IXC may petition for a waiver of any provision of this Part. The waiver shall be granted in whole, granted in Part or denied based on the following:

- (a) The factors enumerated in Section 364.337(4), Florida Statutes;
- (b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived;
- (c) Alternative regulatory requirements for the company which may serve the purposes of this part; and
- (d) Whether the waiver is in the public interest.

Pursuant to Rule 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to CLECs.

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 section this Commission is authorized to waive.

NuVox 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. We have reviewed the notice that will be sent to FDN's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

NuVox has 5 outstanding complaints and FDN has 10 outstanding complaints. NuVox has agreed to resolve any customer complaints that arise from issues occurring prior to the transfer.

Further, neither NuVox nor FDN has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration or CLEC certification.

We believe that in this instance it is appropriate 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 local and long distance services. Furthermore, we believe that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, we recommend the approval of the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of FDN, LLC d/b/a FDN Communications' local and long distance customers to NuVox Communications, Inc.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of FDN, LLC d/b/a FDN Communications' local and long distance customers to NuVox Communications, Inc. 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 Office of Commission Clerk, 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.

By ORDER of the Florida Public Service Commission this 31st day of October, 2007.



ANN COLE
Commission Clerk

(S E A L)

VSM

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

ORDER NO. PSC-07-0876-PAA-TP

DOCKET NO. 070630-TP

PAGE 5

petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 21, 2007.

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.