



Public Service Commission
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DATE: JUNE 27, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (T.WILLIAMS) OFFICE OF THE GENERAL COUNSEL (TEITZMAN) *AT TWC*

RE: DOCKET NO. 020294-TP - JOINT APPLICATION FOR APPROVAL OF ASSET PURCHASE AGREEMENT AND PLAN OF REORGANIZATION WHEREBY NORCOM ACQUISITION, LLC, A WHOLLY OWNED SUBSIDIARY OF NUI CAPITAL CORP., WILL PURCHASE SUBSTANTIALLY ALL ASSETS OF NORCOM, INC. (HOLDER OF ALEC CERTIFICATE NO. 7298 AND IXC CERTIFICATE NO. 4749); AND IMMEDIATELY FOLLOWING CLOSING OF PROPOSED TRANSACTION, NORCOM ACQUISITION WILL MERGE WITH AND INTO NUI TELECOM, INC. (HOLDER OF IXC CERTIFICATE 4824 AND ALEC CERTIFICATE NO. 7328), ALSO A WHOLLY OWNED SUBSIDIARY OF NUI CAPITAL CORP; AND REQUEST FOR CANCELLATION OF NORCOM, INC'S CERTIFICATES 7298 AND 4749 AND RELIEF FROM THE CARRIER SELECTION REQUIREMENTS AS FOUND IN RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE.

AGENDA: 07/09/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020294.RCM

CASE BACKGROUND

On April 2, 2002, the Commission received a joint application for approval of asset purchase agreement and plan of reorganization whereby Norcom Acquisition, LLC, a wholly owned subsidiary of NUI Capital Corp., will purchase substantially all assets of Norcom, Inc. (holder of ALEC Certificate No. 7298 and IXC Certificate No.

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FPSC-COMMISSION CLERK

DATE: JUNE 27, 2002

4749); and immediately following closing of the proposed transaction, Norcom Acquisition will merge with and into NUI Telecom, Inc. (holder of IXC Certificate No. 4824 and ALEC Certificate No. 7328), also a wholly owned subsidiary of NUI Capital Corp.; and request for cancellation of Norcom, Inc.'s Certificate Nos. 7298 and 4749.

Customers obtaining local service from Norcom, Inc. will be transferred to NUI Telecom, Inc. at comparable rates, with no switching fees or interruption of service. Upon consummation of the proposed transaction, notice will be provided to all affected customers prior to the transfer by means of a billing notice.

Therefore, on May 26, 2002, we received a request from Nowalsky, Bronston & Gothard, Attorneys for NUI Telecom, Inc., seeking a waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, for the transfer of certain long distance customers from Norcom, Inc. to NUI Telecom, Inc. due to the corporate restructuring.

There are no past due Regulatory Assessment Fees for Norcom, Inc. or NUI Telecom, Inc. The Commission is vested with jurisdiction in this matter pursuant to Sections 364.337 and 364.603, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the asset purchase agreement and plan of reorganization whereby Norcom Acquisition, LLC, a wholly owned subsidiary of NUI Capital Corp., will purchase substantially all assets of Norcom, Inc. (holder of ALEC Certificate No. 7298 and IXC Certificate No. 4749); and immediately following closing of the proposed transaction, Norcom Acquisition will merge with and into NUI Telecom, Inc. (holder of IXC Certificate No. 4824 and ALEC Certificate No. 7328), also a wholly owned subsidiary of NUI Capital Corp; and request for cancellation of Norcom, Inc.'s Certificate Nos. 7298 and 4749?

RECOMMENDATION: Yes. (T.Williams)

STAFF ANALYSIS: Yes, the Commission should approve the asset purchase agreement and plan of reorganization whereby Norcom Acquisition, LLC, a wholly owned subsidiary of NUI Capital Corp., will purchase substantially all assets of Norcom, Inc. (holder of ALEC Certificate No. 7298 and IXC Certificate No. 4749); and immediately following closing of the proposed transaction, Norcom Acquisition will merge with and into NUI Telecom, Inc. (holder of IXC Certificate No. 4824 and ALEC Certificate No. 7328), also a wholly owned subsidiary of NUI Capital Corp; and request for cancellation of Norcom, Inc.'s Certificate Nos. 7298 and 4749. Customers obtaining local service from Norcom, Inc. will be transferred to NUI Telecom, Inc. at comparable rates, with no switching fees or interruption of service. Upon consummation of the proposed transaction, notice will be provided to all affected customers prior to the transfer by means of a billing notice. Accordingly, staff recommends that the asset purchase agreement, plan of reorganization, and request for cancellation of Norcom, Inc.'s certificates be approved.

ISSUE 2: Should the Commission relieve NUI Telecom, Inc. in this instance of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code?

RECOMMENDATION: Yes. (T.Williams)

STAFF 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 from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service;
- (c) A third party firm has verified the customer's requested change.

Pursuant to Rules 25-24.490 and 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs and ALECs.

Rule 24-24.455(4), Florida Administrative Code, reads as follows:

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) The factors enumerated in Section 364.337(4), Fla. 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; and
- (c) Alternative regulatory requirements for the company may serve the purpose of this Part.

DOCKET NO. 020294-TP
DATE: JUNE 27, 2002

Furthermore, Section 369.337, Florida Statutes, provides, in pertinent part: "...a certificated alternative local exchange telecommunications company may petition the commission for a waiver of some or all the requirements of this chapter [364], except ss.364.16, 369.336, and subsections (1) and (5)."

Staff believes that in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. The companies have attested that they have provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. The companies have further attested that their customers will receive ample notification of the transfer, and will not experience any interruption of service, rate increase, or switching fees. Further, staff has reviewed the customer notification and believes it is adequate.

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, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Accordingly, staff recommends that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance.

ISSUE 3: 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. **(Teitzman)**

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.