



Public Service Commission
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DATE: MAY 8, 2003

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (T.WILLIAMS) &
OFFICE OF THE GENERAL COUNSEL (J.ROJAS) *JK*

RE: DOCKET NO. 030288-TI - APPLICATION FOR TRANSFER OF IXC CERTIFICATE NO. 4031 FROM BROADWING COMMUNICATIONS SERVICES INC. TO C III COMMUNICATIONS OPERATIONS, LLC; AND PETITION FOR WAIVER OF CARRIER SELECTION REQUIREMENT OF RULE 25-4.118, F.A.C., FOR TRANSFER OF CUSTOMERS.

AGENDA: 05/20/03 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030288.RCM

CASE BACKGROUND

On March 20, 2003, this Commission received a petition from Broadwing Communications Services, Inc. requesting a transfer of IXC Certificate No. 4031 from Broadwing Communications Services, Inc. to C III Communications Operations, LLC; and a petition for a waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code.

Pursuant to a purchase agreement Broadwing Communications, Inc. has agreed to sell its entire broadband business, which includes interstate and intrastate long distance and private line services. As a result, substantially all of the assets and the entire customer base of approximately 8,231 customers of its wholly owned subsidiary Broadwing Communications Services, Inc. will be transferred to C III Communications Operations, LLC. As part of

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the agreement, C III Communications Operations, LLC will purchase the tradename "Broadwing" and will continue to provide service under that name.

There are no outstanding penalties, interest, or Regulatory Assessment Fees (RAFs) owed by Broadwing Communications Services, 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 request for transfer of IXC Certificate No. 4031 from Broadwing Communications Services, Inc. to C III Communications Operations, LLC?

RECOMMENDATION: Yes. (Williams)

STAFF ANALYSIS: Pursuant to Rule 25-24.473(3), Florida Administrative Code, the application for assignment or transfer of a certificate will be granted if the Commission determines that such approval is in the public interest.

As part of the agreement, C III Communications Operations, LLC would purchase the trade name Broadwing and would continue to provide service under that name. Customer invoices would continue to be issued in the same format that they were issued prior to the transaction. The proposed transaction would be seamless and transparent to Broadwing Communications Services, Inc.'s customers in Florida. Further, the financial, managerial and technical qualifications of C III Communications Operations, LLC would also be greatly enhanced since the owners of its parent company (C III Communications Operations, LLC) plan to invest substantial capital. The customers should not experience any interruption of service, rate increase, or switching fees.

Therefore, staff believes that in this instance the transfer is in the public interest and recommends that it be approved.

ISSUE 2: Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of certain long distance customers from Broadwing Communications Services, Inc. to C III Communications Operations, LLC?

RECOMMENDATION: Yes. (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 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 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

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(c) Alternative regulatory requirements for the company may serve the purpose of this Part.

C III Communications Operations, 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. Staff has reviewed the notice that will be sent to Broadwing's customers and found it to be adequate, a copy of which is attached here to and incorporated by reference. The customers should not experience any interruption of service, rate increase, or switching fees.

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. 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.

Therefore, 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: 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. (J.Rojas)

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.