

State of Florida



# Public Service Commission

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COMMISSION CLERK

**DATE:** April 12, 2007

**TO:** Commission Clerk (Cole)

**FROM:** Division of Competitive Markets & Enforcement (M. Watts) *MWA*  
Office of the General Counsel (Tan) *TAT* *PCW*

**RE:** Docket No. 070190-TP – Application of Florida Digital Network, Inc. d/b/a FDN Communications, holder of CLEC Certificate No. 5715 and IXC Registration No. TJ246, and FDN, LLC d/b/a FDN Communications, for transfer and name change of CLEC Certificate No. 5715 from Florida Digital Network, Inc. d/b/a FDN Communications to FDN, LLC d/b/a FDN Communications; acknowledgment of cancellation of IXC Registration No. TJ246; acknowledgment of registration as an IXC and adoption of Florida Digital Network, Inc. d/b/a FDN Communications' IXC tariff by FDN, LLC d/b/a FDN Communications, effective upon notification by the companies that the merger has been completed; and for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.

**AGENDA:** 04/24/07 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\070190.RCM.DOC

### Case Background

On March 26, 2007, Florida Digital Network, Inc. d/b/a FDN Communications, its parent, FDN Holdings, LLC, NuVox Transition Subsidiary, LLC (FDN, LLC) and its parent,

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

NuVox, Inc., submitted a notice to the Commission of their intent to consummate a stock transaction involving the merger of Florida Digital Network, Inc. with and into FDN, LLC. Ultimately, Florida Digital Network, Inc. will cease to exist as a corporate entity. Upon closing of the merger transaction, FDN, LLC will be the provider of local and long distance service to customers currently served by Florida Digital Network. In addition, FDN, LLC will acquire and use the fictitious name, FDN Communications, upon closing of the merger transaction.

Florida Digital Network, Inc. is currently certificated to provide competitive local exchange telecommunications company (CLEC) services and is registered as an intrastate interexchange company (IXC) in Florida. NuVox Communications, Inc. also currently operates as a CLEC and IXC in Florida.

To complete the merger, the parties have requested Commission approval for transfer of and name change on CLEC Certificate No. 5715 from Florida Digital Network, Inc. d/b/a FDN Communications to FDN, LLC d/b/a FDN Communications; acknowledgment of cancellation of IXC Registration No. TJ246; and acknowledgment of registration as an IXC and adoption of Florida Digital Network, Inc. d/b/a FDN Communications' IXC tariff by FDN, LLC d/b/a FDN Communications.

In addition, FDN, LLC seeks Commission approval for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection (slamming rule). FDN, LLC is acquiring approximately 53,830 customers currently served by Florida Digital Network. FDN, LLC seeks the waiver so that it will not have to obtain each customer's authorization. With the waiver, FDN, LLC 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.

Staff will administratively process the acknowledgment of cancellation of Florida Digital Network's IXC Registration No. TJ246, and FDN, LLC's acknowledgment of registration as an IXC in accordance with Sections 2.07.C.5.i. and 2.07.C.5.h, Administrative Procedures Manual, respectively. The parties will notify the Commission when the merger transaction is complete and provide effective dates for the CLEC certificate transfer, cancellation of IXC Registration No. TJ246, and activation of FDN, LLC's new IXC registration.

This recommendation addresses the transfer of and name change on CLEC Certificate No. 5715 from Florida Digital Network, Inc. d/b/a FDN Communications to FDN, LLC d/b/a FDN Communications, and the request for waiver of Rule 25-4.118, Florida Administrative Code.

The 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. Accordingly, staff believes the following recommendations are appropriate.

### Discussion of Issues

**Issue 1:** Should the Commission approve the transfer of and name change on CLEC Certificate No. 5715 from Florida Digital Network, Inc. d/b/a FDN Communications to FDN, LLC d/b/a FDN Communications?

**Recommendation:** Yes. The Commission should approve the requested transfer of and name change on CLEC Certificate No. 5715. **(M. Watts/Tan)**

**Staff Analysis:** Pursuant to Section 364.345(2), Florida Statutes, Certificates; territory served; transfer, 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 the Commission.

The companies assert that the proposed transaction will serve the public interest. Combining the financial resources, experience and complementary management skills of NuVox Communications, Inc. and FDN, LLC under one umbrella will benefit the public by providing strong telecommunications providers in their respective markets, thereby broadening the available provider choices. The merger of these companies will provide synergies in their operations enabling them to compete more effectively in the telecommunications market. Increased economies of scale will also allow them to operate more efficiently and provide economic choices for consumers.

After a review of the application, the proposed transaction would not adversely affect customers as FDN, LLC will continue to provide the same services that are currently provided by Florida Digital Network. FDN, LLC will adopt Florida Digital Network's price list that is currently on file with the Commission. The customers will retain the same rates, terms, and conditions of service as currently received.

Therefore, staff recommends that the Commission approve the transfer of and name change on CLEC Certificate No. 5715 from Florida Digital Network, Inc. d/b/a FDN Communications to FDN, LLC d/b/a FDN Communications.

**Issue 2:** Should the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Florida Digital Network, Inc. d/b/a FDN Communications' local and long distance customers to FDN, LLC d/b/a FDN Communications?

**Recommendation:** Yes, the Commission should approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. **(M. Watts/Tan)**

**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 (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.

Docket No. 070190-TP  
Date: April 12, 2007

The authority for Rule 25-4.118, Florida Administrative Code, is found in Section 364.603, Florida Statutes, which is a section the Commission is authorized to waive.

FDN, LLC 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. Staff has reviewed the notice that will be sent to Florida Digital Network's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees. In addition, FDN, LLC has agreed to resolve any customer complaints that arise from issues occurring prior to the transfer.

Further, Florida Digital Network does not have any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration or CLEC certification.

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

Therefore, staff recommends that the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Florida Digital Network, Inc. d/b/a FDN Communications' local and long distance customers to FDN, LLC.

Docket No. 070190-TP

Date: April 12, 2007

**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 administratively upon notification from the company that the asset transfer and name change has been completed. **(Tan)**

**Staff Analysis:** 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 administratively upon notification from the company that the asset transfer and name change has been completed.