

State of Florida



Public Service Commission

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COMMISSION CLERK

DATE: October 11, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (M. Watts)
Office of the General Counsel (McKay) *VSM*

PLW *MM* *AM*

RE: Docket No. 070630-TX – 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.

AGENDA: 10/23/07 – 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\070630.RCM.DOC

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 transfer of customers from FDN to NuVox due to an internal corporate reorganization. Both

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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.

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 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.?

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/McKay)

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 IXC's.

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 the 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. Staff has 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 as of the filing date of this recommendation, 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.

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 FDN, LLC d/b/a FDN Communications' local and long distance customers to NuVox Communications, Inc.

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Issue 2: 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. **(McKay)**

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.