

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 17, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (Curry) *KLC*
Division of Economic Regulation (Buys) *DRB* *ALM*
Office of the General Counsel (Brooks) *JB* *AT*

[Handwritten signatures]

RE: Docket No. 100180-TP – Petition for approval of indirect transfer of controlling stock interest in ITS Telecommunications Systems, Inc., from the trustees of the Robert M. Post marital trust to Jeffrey S. Leslie, cancellation of PATS Certificate No. 7551, and waiver of carrier selection requirements.

AGENDA: 06/29/10 – 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\RAD\WP\100180.RCM.DOC

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Case Background

On March 27, 2010, the Trustees of the Robert M. Post Marital Trust (Trust), owners of Postco, Inc. (Postco), and Jeffrey S. Leslie entered into a stock redemption agreement. Postco is the holding company that owns ITS Telecommunications Systems, Inc. (ITS or Company). The stock redemption agreement between the parties transfers ownership of Postco from the Robert M. Post Marital Trust to Mr. Jeffrey S. Leslie.

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On April 14, 2010, ITS submitted a petition to the Florida Public Service Commission (Commission) requesting approval of an indirect transfer of control of telecommunications facilities from the trustees of the Robert M. Post Marital Trust to Mr. Leslie, cancellation of PATS Certificate No. 7551, and a waiver of carrier selection requirements.¹

ITS is a wholly-owned subsidiary of Postco and is authorized by the Commission to provide local exchange telecommunication services in Florida pursuant to incumbent local exchange telecommunications company (ILEC) Certificate No. 30 and competitive local exchange (CLEC) Certificate No. 4873. ITS is also authorized by the Commission to provide pay telephone services (PATS) pursuant to PATS Certificate No. 7551 and is a registered intrastate interexchange telecommunications company (IXC) Registration No. TK162.

Pursuant to Section 364.33, Florida Statutes (F.S.), Certificate of Necessity Prerequisite to Construction, Operation, or Control of Telecommunications Facilities, Commission approval is required for the transfer of control of ITS' ILEC and PATS facilities. Although, the transfer of a PATS certificate requires Commission approval, ITS has requested cancellation of its PATS certificate. Section 364.33, F.S., does not apply to CLEC carriers or IXCs. CLECs are exempt from Section 364.33, F.S., pursuant to Section 364.337(2), F.S. IXCs are exempt from this statutory requirement pursuant to Section 364.02(14)g, F.S. Therefore, ITS is not requesting approval to transfer its CLEC or IXC operations.

ITS was previously controlled by Robert M. Post, Jr. (who died in 2007) through the Trust. In connection with wrapping up his estate, the business entities he formerly controlled are being sold. As a result, ownership of the holding company that owns ITS (Postco) will change from the Trust to Mr. Leslie. Mr. Leslie has been the CEO of ITS since 2007 and has served as the chief operating officer since 1996. The transfer of control to Mr. Leslie will not result in any change in management or operation of ITS.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.01, 364.33, 364.335 and 364.603, F.S. Accordingly, staff believes the following recommendations are appropriate.

¹ The company filed an amended petition on May 19, 2010.

Discussion of Issues

Issue 1: Should the Commission approve ITS Telecommunications Systems, Inc.'s petition for approval of indirect transfer of controlling stock interest in ITS Telecommunications Systems, Inc., from the trustees of the Robert M. Post Marital Trust to Jeffrey S. Leslie, cancellation of PATS Certificate No. 7551, and acknowledge that a waiver of Rule 25-4.118, Florida Administrative Code, is not required?

Recommendation: Yes, the Commission should approve ITS Telecommunications Systems, Inc.'s petition for approval of indirect transfer of controlling stock interest in ITS Telecommunications Systems, Inc., from the trustees of the Robert M. Post Marital Trust to Jeffrey S. Leslie, cancellation of PATS Certificate No. 7551, and acknowledge that a waiver of Rule 25-4.118, Florida Administrative Code, is not required. (Curry, Buys, Brooks)

Staff Analysis:

I. Jurisdiction

A. Section 364.33, F.S.

The Commission has authority under Section 364.33, F.S., to approve an application for transfer of control. Section 364.33, F.S., states, except for a transfer of a certificate of necessity from one person to another or to the parent or affiliate of a certificated person, a person may not acquire majority organizational control of a telecommunications facilities with out prior Commission approval. Because Mr. Leslie is not a current certificate holder, staff believes that this transfer requires Commission approval. Staff notes that this provision does not provide specific standards which the Commission may follow in making its decision to approve a transfer of control. However, staff believes that Section 364.01, F.S., implies a public interest standard that the Commission should follow when deciding whether to approve or deny transfers of control.

The legislative intent of Section 364.01, F.S., is clear: the Commission is to exercise its jurisdiction in order to protect "the public health, safety, and welfare" as it relates to basic local telecommunications services. Based on the intent of the Florida Legislature, the Commission should base its decisions on whether to grant an application for transfer of control if it satisfies the public interest. In developing its recommendation, staff reviewed the managerial, technical, and financial capability of the acquiring entity.

B. Waiver of Rule 25-4.118, Florida Administrative Code

Pursuant to Rule 25-4.118(1), Florida Administrative Code (F.A.C.), a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), F.A.C., 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

ITS requested that the Commission find that the carrier selection requirements of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection, to be inapplicable. The requirements of Rule 25-4.118, Florida Administrative Code, apply when there is a change in the provider of a customer's telecommunications services.

In this instance, ITS is the company that is currently registered with the Secretary of State and is the Commission-certificated entity that currently provides regulated telecommunications services to Florida customers. Whether the Commission approves or denies the request for transfer of control of ITS, Florida customers will not be subject to a change of their telecommunications services provider. Because the provider will not change, a waiver of Rule 25-4.118, Florida Administrative Code, is not required.

FCC Activity – WC Docket No. 10-102²

Staff has monitored the status of ITS' Domestic Section 214 Application filed with the FCC on May 4, 2010.³ The FCC established a streamlined pleading cycle, announced in DA 10-911, released on May 20, 2010. Comments to the FCC regarding the transfer were due on June 3, 2010, and reply comments are due by June 10, 2010. No comments were filed. According to the DA 10-911 notice, unless otherwise notified by the FCC, the company may transfer control on the 31st day after the date of the notice.

II. Staff's Assessment

A. Managerial Capability

ITS is a wholly owned subsidiary of Postco and is authorized by the Commission to provide telecommunications services in Florida. If the Commission approves the transfer neither ITS nor its operations will be directly affected. ITS will not change or become a new entity. The transfer will only change the ownership of ITS' holding company from the Trust to Mr. Leslie. ITS will remain a wholly-owned subsidiary of Postco and will continue to operate in Florida.

ITS attests that because the transfer of control only affects a change in the ownership for ITS' holding company, the transaction will be transparent and seamless to its customers. The transfer will not result in a transfer of telecommunications facilities or certificates held by ITS or an amendment of the Company's tariffs. The management and operations of ITS will also remain the same. ITS claims that by retaining its existing management after the transfer, the

² Domestic Section 214 Application filed for the transfer of control of Postco, Inc. to Jeffery S. Leslie.

³ Telecommunications carriers are required to obtain a Section 214 license from the FCC prior to providing services. When a carrier seeks to transfer control of the company, it must submit a Domestic Section 214 Application to request approval.

Company will continue to have the requisite managerial, technical, and financial ability to provide the same quality of services that it currently provides.

B. Technical Capability

ITS has stated that no telecommunications facilities or certificates will be transferred from ITS and that the company will continue to operate its Florida telecommunications facilities. The current technical staff will be retained and the same networks that currently serve Florida customers will continue to serve them after the transfer of control has been completed. ITS' past performance with respect to the Commission's service standards indicates that the quality of service provided in Florida is acceptable. Since 1999, ITS has received a total of ten complaints. Eight of those complaints were received prior to 2005. The other two complaints were received in 2006 and 2009.

C. Financial Capability

On May 28, 2010, staff submitted a data request to ITS requesting various financial documents for ITS and Postco. Since Postco is a privately held corporation, the Company's financial statements are not generally available for public inspection. In response to staff's data request, ITS submitted various financial documents of which portions of the financial information were filed under a claim of confidentiality. Therefore, staff is not at liberty to disclose actual financial figures in this recommendation. However, the Company has represented that the transfer of ownership of Postco from the Trust to Mr. Leslie will not alter the current debt structure of Postco and ITS.

In January 2009, ITS entered into a loan agreement with the United States of America through the Rural Utilities Service (RUS) to finance the deployment of broadband service. Under the terms of the loan agreement, RUS must approve the proposed acquisition of Postco by Mr. Leslie. On May 27, 2010, RUS approved the transaction as presented.

The transaction appears to benefit ITS' financial viability going forward. Upon closing of the transaction, Postco's pension plan will be fully funded and Postco will take steps to terminate the pension plan and replace it with a 401K plan. In addition, compensation paid by ITS to Mrs. Post will cease. This results in a reduction of annual expenses of approximately \$600,000.

ITS claims that it will be financially capable of fulfilling all of the requirements of a telecommunications company. ITS provided staff with pro forma financial statements that it believes are a reasonable representation of the Company's expected financial results on a going forward basis after the stock transfer transaction closes. ITS represented to staff that the cash flow statement the Company provided shows that ITS will have the ability to make its debt payments when due, pay interest expense, and maintain and increase its cash and cash equivalents from 2010 going forward.

Given ITS' representations regarding sufficient cash flow and the commitment of financing from RUS, staff believes ITS has the necessary financial capability to continue to support its basic residential telecommunications service operations.

III. Conclusion

Based upon staff's analysis of the managerial, technical, and financial capabilities of the acquiring entity, staff believes that the indirect transfer of controlling stock interest in ITS Telecommunications Systems, Inc., from the trustees of the Robert M. Post Marital Trust to Mr. Jeffrey S. Leslie would be in the public interest.

Therefore, staff recommends that the Commission approve ITS Telecommunications Systems, Inc.'s petition for approval of indirect transfer of controlling stock interest in ITS Telecommunications Systems, Inc., from the trustees of the Robert M. Post Marital Trust to Mr. Leslie, cancellation of PATS Certificate No. 7551, and acknowledge that a waiver of Rule 25-4.118, F.A.C., is not required.

Docket No. 100180-TP

Date: June 17, 2010

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, F.A.C., within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested, this docket should be closed administratively upon notification by the company that indirect transfer of controlling stock interest either has or has not been consummated. (Brooks)

Staff Analysis: At the conclusion of the protest period, if no protest is filed, this docket should be closed administratively upon notification by the company that the transfer of control either has or has not been consummated.