

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 100180-TP
ORDER NO. PSC-10-0452-PAA-TP
ISSUED: July 15, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING INDIRECT TRANSFER OF
CONTROLLING STOCK INTEREST IN
ITS TELECOMMUNICATIONS SYSTEMS, INC.

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

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.

On April 14, 2010, ITS submitted a petition requesting approval of an indirect transfer of control of telecommunications facilities from the trustees of the Robert M. Post Marital Trust to

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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 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 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, our approval is required for the transfer of control of ITS' ILEC and PATS facilities. Although, the transfer of a PATS certificate requires our 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.

We have jurisdiction over this matter pursuant to Sections 364.01, 364.33, 364.335 and 364.603, F.S.

ANALYSIS

I. Jurisdiction

A. Section 364.33, F.S.

We have authority under Section 364.33, F.S. to approve an application for transfer of control. Section 364.33, F.S. states that 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 without our approval. Because Mr. Leslie is not a current certificate holder, this transfer requires our approval. Section 364.33, F.S. does not provide specific standards for deciding the approval or denial of a transfer of control. However, Section 364.01, F.S. implies that approval of transfer of control must be in the public's interest.

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

The legislative intent of Section 364.01, F.S. clearly states that we are to exercise 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, granting or denying the petition for transfer of control is based on factors including the managerial, technical, and financial capability of the acquiring entity and the public’s interest.

B. Waiver of Rule 25-4.118, F.A.C.

The requirements of Rule 25-4.118, F.A.C. apply when there is a change in the provider of a customer’s telecommunications services. Pursuant to Rule 25-4.118(1), 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 asserts that the carrier selection requirements of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection, is inapplicable. ITS is the company that is currently registered with the Secretary of State and is the certificated entity that currently provides regulated telecommunications services to Florida customers. Because the provider will not change and Florida customers will not be subject to a change of their telecommunications services provider, a waiver of Rule 25-4.118, F.A.C., is not required.

C. FCC Activity – WC Docket No. 10-102²

We also considered the status of ITS’ Domestic Section 214 Application filed with the FCC on May 4, 2010³, wherein 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 were 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.

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.

II. Assessment

A. Managerial Capability

ITS is a wholly owned subsidiary of Postco and is authorized to provide telecommunications services in Florida. Our approval of the transfer will not directly affect ITS or its operations. ITS will not change or become a new entity, and the transfer only changes 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 asserts that by retaining its existing management after the transfer, the Company will continue to have the requisite managerial, technical, and financial ability to provide the same quality of services.

B. Technical Capability

ITS states 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 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

Since Postco is a privately held corporation, the Company's financial statements are not generally available for public inspection. Therefore, ITS submitted various financial documents of which portions of the financial information were filed under a claim of confidentiality. The Company 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 asserts that it will be financially capable of fulfilling all of the requirements of a telecommunications company. ITS provided 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 represents 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, we find that ITS has the necessary financial capability to continue to support its basic residential telecommunications service operations.

CONCLUSION

Based on our analysis of the managerial, technical, and financial capabilities of the acquiring entity, we find 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 is in the public's interest.

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

The docket shall be closed administratively upon notification by the company that the transfer of control either has or has not been consummated.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that 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 is approved. It is further

ORDERED that the cancellation of PATS Certificate No. 7551 is approved. It is further

ORDERED that waiver of Rule 25-4.118, Florida Administrative Code is not required at this time. It is further

ORDERED that the docket shall be closed administratively upon notification by the company that the transfer of control either has or has not been consummated.

ORDERED that 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.

By ORDER of the Florida Public Service Commission this 15th day of July, 2010.



ANN COLE
Commission Clerk

(SEAL)

PERE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 5, 2010.

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In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.