

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: September 23, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Williams)
Office of the General Counsel (Rojas)

RE: Docket No. 040823-TX – Joint application for approval for name change and transfer of Certificate No. 5618 of Focal Communications Corporation of Florida to Broadwing Communications, LLC; approval for Focal Communications Corporation of Florida to abandon services; and notification of the transfer of assets and customers of Focal Communications Corporation of Florida to Broadwing Communications, LLC.

AGENDA: 10/05/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040823.RCM.DOC

Case Background

On August 09, 2004, this Commission received a petition from Robert E. Stup, Jr. and Michelle S. Cadin, Mintz Levin Cohn Ferris Glovsky and Popeo, PC, on behalf of their clients Corvis Corporation and its affiliates, requesting approval for a name change and transfer of Certificate No. 5618 of Focal Communications Corporation of Florida to Broadwing Communications, LLC; and for Focal Communications Corporation of Florida to abandon services. In addition, the petition provided notification of the transfer of assets and customers of Focal Communications Corporation of Florida to Broadwing Communications, LLC, due to a corporate restructuring.

The proposed consolidation is intended to simplify Corvis' corporate structure resulting in significant administrative and operational efficiencies.

The Commission is vested with jurisdiction in the transfer of customers from Focal Communications Corporation of Florida to Broadwing Communications, LLC, pursuant to Section 364.345 and 364.603, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the name change and transfer of Certificate No. 5618 from Focal Communications Corporation of Florida to Broadwing Communications, LLC?

RECOMMENDATION: Yes. (Williams)

STAFF ANALYSIS: Pursuant to Rule 364.345 (2), Florida Statutes, 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.

After a review of the petition, the proposed transaction would not adversely affect the services currently provided by Focal Communications Corporation of Florida since Broadwing Communications, LLC would continue to provide services without interruption. Further, Broadwing Communications, LLC would adopt Focal Communications Corporation of Florida's existing price list.

Staff believes that in this instance it is in the public interest to grant the name change and transfer of Certificate No. 5618 from Focal Communications Corporation of Florida to Broadwing Communications, LLC.

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 long distance customers from Focal Communications Corporation of Florida to Broadwing Communications, 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 (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 25-24.490, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(4), Florida Administrative Code, states in part:

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

Broadwing Communications, 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 Focal Communications Corporation of Florida's customers and found it to be adequate. 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.

Further, Focal Communications Corporation of Florida and Broadwing Communications, LLC do not have any outstanding regulatory assessment fees, penalties or interest.

Therefore, staff recommends that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance.

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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. (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.