



# Public Service Commission

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RECORDS AND REPORTING

**DATE:** OCTOBER 26, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF REGULATORY OVERSIGHT (PRUITT)  
DIVISION OF LEGAL SERVICES (CALDWELL) *Out (used) A 120*  
DIVISION OF COMPETITIVE SERVICES (SIMMONS) *SAS*

**RE:** DOCKET NO. 001536-TP - JOINT PETITION BY VISTA-UNITED TELECOMMUNICATIONS (HOLDER OF LEC CERTIFICATE NO. 1971 AND IXC CERTIFICATE NO. 2442) AND SMART CITY TELECOMMUNICATIONS LLC ("SMART CITY") FOR TRANSFER OF AND NAME CHANGE ON CERTIFICATE NOS. 1971 AND 2442 TO SMART CITY, AND FOR DESIGNATION OF SMART CITY AS THE ELIGIBLE TELECOMMUNICATIONS CARRIER WITHIN ITS CERTIFICATED LOCAL EXCHANGE TERRITORY.

**AGENDA:** 11/07/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUES 1 AND 2 - FINAL AGENCY ACTION FOR ISSUE 2A - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\RGO\WP\001536.RCM

### CASE BACKGROUND

On October 5, 2000, Vista-United Telecommunications (Vista) and Smart City Telecommunications LLC (Smart City) filed a joint petition for transfer of and name change on Local Exchange Telecommunications (LEC) Certificate No. 1971 and Interexchange Telecommunications (IXC) Certificate No. 2442. Under an agreement dated September 8, 2000, Vista has agreed to sell, and Smart City has agreed to buy, the regulated telecommunications assets of Vista. The petition also requested that Smart City be designated as the eligible telecommunications carrier within its certificated local exchange area.

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FPSC-RECORDS/REPORTING

As a price regulated company, Vista is authorized to provide LEC services in portions of Orange and Osceola counties. Vista is a small local exchange telecommunications company as defined in Section 364.052, Florida Statutes, and is a rural telephone company as defined in 47 U.S.C. §153(47). As of August 31, 2000, Vista provided service to approximately 4,500 local customers and 13 long distance customers.

Smart City, a limited liability company organized under the laws of the State of Delaware, started fifteen years ago as a telephone company dedicated to providing its services at large hospitality facilities. The company has expanded its service offerings to include high-speed Internet connectivity, local area networking, pay telephones and wireless service. Smart City registered to do business in Florida with the Office of the Secretary of State on September 6, 2000.

On October 11, 2000, Counsel for Smart City and Vista-United sent a joint letter enclosing a copy of the Carrier Services Agreement (CSA) between Walt Disney World Co., etc. and Smart City Telecommunications LLC. In the letter, the counsels ask that staff administratively approve the CSA or place the CSA before the Commission in conjunction with the Joint Petition so that the Commission may approve it.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the joint petition of Vista and Smart City for the transfer of and name change on LEC Certificate No. 1971 and IXC Certificate No. 2442 to Smart City Telecommunications LLC be approved.

**RECOMMENDATION:** Yes. The Commission should approve as in the public interest the transfer of and name change on Certificate Nos. 1971 and 2442. (Pruitt)

**STAFF ANALYSIS:** Rule 25-4.005, Florida Administrative Code, outlines the subscriber notice and advertisement procedures required for a transfer including notices to the governing bodies of the counties and municipalities affected and to the public counsel. The petitioners have complied with these notice requirements.

With the exception of a name change, the transfer does not contemplate any immediate change in the services provided to the affected customers. Smart City will operate under Vista's tariffs now on file with the Commission with no changes to the rates, terms or conditions.

Section 364.345(2), Florida Statutes, requires a determination by this Commission that the transfer is in the public interest. This transfer of the certificates is in the public interest because it will bring to Florida and to the affected customers a company with experienced management, with financial resources necessary to continue the provision of reliable telecommunications service and with the availability of high quality and innovative services.

**ISSUE 2:** Should Smart City be designated as an eligible telecommunications carrier?

**RECOMMENDATION:** Yes. (Pruitt)

**STAFF ANALYSIS:** In Order No. PSC-97-1262-FOF-TP all Florida incumbent LECs were designated as eligible telecommunications carriers (ETCs) for purposes of the federal universal service program and discounted rates for lifeline customers. Therefore, since Smart City will be the incumbent LEC in its service

territory, the company should be designated as an eligible telecommunications carrier.

**ISSUE 2A:** Should the Commission approve the Carrier Services Agreement between Walt Disney World Co., et al. and Smart City Telecommunications LLC?

**RECOMMENDATION:** The Carrier Services Agreement between Walt Disney World Co., et al. and Smart City Telecommunications LLC is presumed valid and is, therefore, effective, but the Commission makes no finding that the nonbasic rates in the Carrier Services Agreement satisfy the incremental cost standard in Section 364.051(5)(b), Florida Statutes. However due to the manner in which the nonbasic rates were established, staff believes there is a high likelihood that the cost standard is satisfied and on this basis, staff recommends that this action not be revisited absent a challenge. (Caldwell, Simmons)

**STAFF ANALYSIS:** Paragraph 7.10 of the Asset Purchase Agreement between Vista-United and Smart City provides in part "At or before the closing, the Carrier Services Agreement (CSA) shall have been filed with and approved by the FPSC." Staff notes that such a request is unusual but we analogize the CSA to a tariff. Tariff filings by price regulated LECs such as Vista-United are presumptively valid.

On October 31, 2000, staff met with counsel for the parties who explained that the CSA was an agreement that included various contract provisions, which may differ from the tariff, but that the rates for the services match Vista-United's current tariffed rates. The term of the CSA is for five years and provides both parties with some certainty.

Section 364.051(5)(b), Florida Statutes delegates "continuing regulatory oversight of nonbasic services for purposes of ensuring resolution of service complaints, preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market." It appears that the rates in this contract were initially filed as tariffed rates while Vista-United was a rate-of-return regulated company. Under price regulation, it appears that the rates have increased according to the cap requirements under

Section 364.051, Florida Statutes. Staff has reviewed the filing, and there does not appear to be any substantive conflict with applicable statutes. Therefore, the Carrier Services Agreement between Walt Disney World Co., et al. and Smart City Telecommunications LLC is presumed valid and is, therefore, effective. Staff notes that the Commission should make no finding that the nonbasic rates in the agreement satisfy the incremental cost standard in Section 364.051(5)(b), Florida Statutes. However, due to the manner in which the nonbasic rates were established, staff believes there is a high likelihood that the cost standard is satisfied and on this basis, staff recommends that this action not be revisited absent a challenge.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes, if no person whose substantial interests are affected by the proposed agency action files a protest of Issues 1 and 2 within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Caldwell)

**STAFF ANALYSIS:** Whether staff's recommendations on Issues 1 and 2 are approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon the issuance of the Consummating Order.