

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: May 21, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Pruitt)
Office of the General Counsel (Mann)

RE: Docket No. 080131-TL – Joint petition of Embarq Florida, Incorporated and AT&T Florida to transfer portions of AT&T Florida's certificated area to Embarq, and to amend certificates.

AGENDA: 06/03/08 – 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\080131.RCM.DOC

Case Background

On February 28, 2008, Embarq Florida, Incorporated (Embarq) and BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T) filed, as required by Rule 25-4.005, Florida Administrative Code (F. A. C.), a notice of intent to file a joint petition seeking approval to transfer a portion of AT&T's territory to Embarq. The two incumbent local exchange carriers (ILECs) filed the joint petition on May 1, 2008.

The territory in question consists of approximately 90 lots (including partial lots) in the Provenance development in Seminole County. The area to be transferred is currently in AT&T's Oviedo Exchange. The current ILEC boundary line divides the planned development and

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individual lots. No subscribers currently live in the area to be transferred and the single family lots are currently owned by the developer. The transfer of this territory to the Embarq Winter Park Exchange will place the entire development in Embarq's territory, where the majority of the present planned lots are located, and make the provision of service more easily administered by one ILEC and less confusing for future customers.

The Commission is vested with jurisdiction in this matter pursuant to Section 364.335, Florida Statutes. Petitions for territorial transfers are governed by Rule 25-4.005, F. A. C., which is appended to this recommendation as Attachment A.

Discussion of Issues

Issue 1: Should the Petition filed by Embarq and AT&T for approval of a territorial agreement to modify the Winter Park Exchange and the Oviedo Exchange boundaries and to amend the companies' local exchange certificates be approved?

Recommendation: Yes. The petition filed by Embarq and AT&T should be approved because it meets the requirements of Rule 25-4.005, F. A. C., Transfer of Certificate of Public Convenience and Necessity as to All or Portion of Service Area. Embarq and AT&T should file tariffs reflecting the exchange boundaries changes within 60 days of the issuance of the consummating order. (Pruitt)

Staff Analysis: The petition requests that approximately 90 lots in a planned development be moved from the AT&T Oviedo Exchange to the Embarq Winter Park Exchange, thereby placing all lots and portions of lots in the development in the same exchange. All future customers in the subdivision would then be purchasing service under the same Embarq General Subscriber Services Tariff.

In compliance with Rule 25-4.005, F. A. C., the petition states that neither AT&T nor Embarq hold any deposits or deposit interest since there are no customers in the subject territory, there are no pending applications for service at this time (all lots to be transferred are currently owned by the developer), and no financial exchange has been or will be given for the transfer of the territory in question.

Rule 25-4.005, F. A. C., requires that a notice of intent be provided to the Public Counsel and the governing bodies of any affected municipalities or counties in addition to this Commission. The rule also requires the publication of a notice in an area newspaper on two separate occasions, at least two weeks prior to filing the petition. A sworn affidavit stating the notice of intent had been properly provided to the required officials was included with the petition. Copies of the legal advertisements were also included with the petition.

Accordingly, staff recommends that the petition to modify the exchange boundaries of AT&T's Oviedo Exchange and Embarq's Winter Park Exchange be approved. Staff believes the request is in the public interest and would eliminate future provision of service confusion in the subdivision such as which ILEC is the appropriate local service provider and what repair service, calling scopes, and rates apply.

Issue 2: Should this docket be closed?

Recommendation: Yes. 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, a consummating order should be issued. The docket should be closed administratively upon filing with the Division of Competitive Markets and Enforcement, within 60 days of the issuance of the consummating order, tariffs reflecting the exchange boundaries changes. (Mann)

Staff Analysis: This docket should be closed administratively upon the filing of tariffs, within 60 days of the issuance of the consummating order, by Embarq and AT&T reflecting the exchange boundaries changes.

25-4.005 Transfer of Certificate of Public Convenience and Necessity As to All or Portion of Service Area.

(1) Request for approval by the Commission of transfer of any certificate of public convenience and necessity (or portion thereof) shall be made by joint petition of the certificate holder and transferee after reasonable notice has been given to all subscribers affected by the proposed transfer. Requests for approval shall be accompanied by an affidavit that notice of intention to file the petition has been given:

(a) By mail or personal delivery to the governing bodies of the counties and municipalities affected, to the public counsel, and to the Commission,

(b) By a legal advertisement in a newspaper of general circulation in the area affected and published on two (2) separate occasions at least two (2) weeks prior to the filing of the joint petition on the proposed transfer, and

(c) By written notice subject to Commission approval, issued to each subscriber in the area to be transferred concurrent with the filing of the petition.

(2) Upon approving a transfer of certificate, or portion thereof, the Commission will cancel same and reissue in the name of the transferee or amend the description of the service area or both.

(3) Such joint petitions shall include detailed descriptions of the affected boundaries; the number of subscribers, if any, in each petitioned area; changes in rates; service being provided by either petitioner in areas to be transferred; pending applications for service held by either petitioner; changes in calling scope; customers to be transferred; deposits and deposit interest; any financial exchange or consideration for the proposed change, and a list by name and telephone number of all customers who will be exempt from the proposed change.

(4) Any subscriber or group of subscribers of a telephone company may petition the Commission for transfer from the service area of such telephone company to that of another telephone company serving contiguous territory.

(5) If a customer survey is conducted by a telephone company among customers affected by the proposed transfer, return postage shall be paid by the company serving the affected customer and survey ballots shall be returnable to the Public Service Commission, Attention: Division of Competitive Markets and Enforcement, for tabulation.

Specific Authority 350.127(2) FS. Law Implemented 364.335 FS. History—New 12-1-68, Amended 5-4-81, Formerly 25-4.05, Amended 9-16-99.