

State of Florida



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# Public Service Commission

09 SEP -3 AM 11:00

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TALLAHASSEE, FLORIDA 32399-0850

COMMISSION  
CLERK

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

090000-07

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**DATE:** September 2, 2009  
**TO:** Ann Cole, Commission Clerk - PSC, Office of Commission Clerk  
**FROM:** Ray E. Kennedy, Utilities System/Engineering Spec Supr - SES, Division of Regulatory Compliance  
**RE:** Clarification Regarding Document No. 08924, Filed by Nowalsky, Bronston & Gothard on August 28, 2009

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In the subject company's filing, the filer requested that the Commission waive the verification requirements of Florida Administrative Code Rule 25-4.118. In the attached e-mail, the company has withdrawn the request for waiver of Rule 25-4.118, F.A.C. The transaction involves a transfer of control of an interexchange company and a competitive local exchange company. The filer understood that Commission approval was not needed for the transfer of control. In an abundance of caution, the filer included the waiver request that is not needed, thus the matter should not be docketed.

If you need more information, I can be reached at 413-6584.

DOCUMENT NUMBER-DATE

09171 SEP-3 2

FPSC-COMMISSION CLERK

**Ray Kennedy**


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**From:** Ray Kennedy  
**Sent:** Friday, August 28, 2009 11:47 AM  
**To:** 'Ben Bronston'  
**Cc:** Becky Heggelund  
**Subject:** RE: Notification by Benchmark Communications, LLC, Mark Guidry, Jason Veasey, Warren Gottsegen, Benjamin Bronston and TDMM Cable Funding, LLC of a Purchase Agreement

Hi Ben,

All is well here and hopefully there as well. I will forward our communication to the Clerk's office to be added to your filing. I thank you too for the quick response.

Ray

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**From:** Ben Bronston [mailto:bbronston@nbglaw.com]  
**Sent:** Friday, August 28, 2009 11:44 AM  
**To:** Ray Kennedy  
**Cc:** Becky Heggelund  
**Subject:** RE: Notification by Benchmark Communications, LLC, Mark Guidry, Jason Veasey, Warren Gottsegen, Benjamin Bronston and TDMM Cable Funding, LLC of a Purchase Agreement

Hi Ray:

I have not spoken to you in quite awhile. I hope all is well with you and your family.

Thank you so much for your email. Your understanding of the transaction is 100% correct. As a result, we hereby withdraw our request for a slamming rule waiver (we only requested it in an abundance of caution).

Thank you again for your prompt attention to this matter. It is always a pleasure to deal with you and the Commission.

Respectfully,  
 Ben Bronston

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Benjamin W. Bronston  
 Nowalsky, Bronston & Gothard  
 A Professional Limited Liability Company  
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 6300 West Loop South  
 Suite 395  
 Bellaire, TX 77401  
 Main: (713) 666-0395  
 Direct: (713) 723-3000  
 Cell: (713) 885-6210  
 Fax: (713) 583-9720

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**From:** Ray Kennedy [mailto:RKennedy@PSC.STATE.FL.US]  
**Sent:** Friday, August 28, 2009 10:39 AM  
**To:** Ben Bronston  
**Subject:** Notification by Benchmark Communications, LLC, Mark Guidry, Jason Veasey, Warren Gottsegen, Benjamin Bronston and TDMM Cable Funding, LLC of a Purchase Agreement

Good Morning Mr. Bronston,

9/2/2009

DOCUMENT NUMBER-DATE  
 09171 SEP-3-09

FPSC-COMMISSION CLERK

You are correct in your filing that Commission approval is not needed for the transaction. Since Benchmark is retaining the CLEC Certificate and IXC Registration, there is only a change in ownership/control. As a result, your request for the slamming rule waiver is not necessary. Staff understands that CLEC and IXC services will still be provided by the certificated entity, Benchmark, and that the transaction will be transparent to the customers. Please acknowledge that our understanding is correct and that you understand that staff will not docket your filing to address the slamming rule waiver. Essentially, I am asking you to withdraw your request for a slamming rule waiver.

Also, you should submit updates to the company's contact and liaison information. I assume there may be new points of contact, address, phone numbers, etc.

If anything I state in this e-mail is inaccurate, please contact me.

Ray Kennedy  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
Phone: 850-413-6584  
Fax: 850-413-6585  
E-Mail: rkennedy@psc.state.fl.us

No virus found in this incoming message.

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Version: 8.5.409 / Virus Database: 270.13.71/2331 - Release Date: 08/28/09 06:26:00

9/2/2009

NOWALSKY, BRONSTON & GOTHARD

RCP

A Professional Limited Liability Company

Attorneys at Law

Leon L. Nowalsky  
Benjamin W. Bronston  
Edward P. Gothard

1420 Veterans Memorial Blvd.  
Metairie, Louisiana 70005  
Telephone: (504) 832-1984  
Facsimile: (504) 831-0892

Philip R. Adams, Jr.

August 27, 2009

*Via Overnight Mail*

Florida Public Service Commission  
Executive Secretary  
2540 Shumard Oak Drive  
Tallahassee, FL 32399

RECEIVED  
2009 AUG 28 PM 3:37

Re: Notification by Benchmark Communications, LLC, Mark Guidry, Jason Veasey, Warren Gottsegen, Benjamin Bronston and TDMM Cable Funding, LLC of a Purchase Agreement

Dear Sir or Madam:

On behalf of Benchmark Communications, LLC ("Benchmark"), Mark Guidry, Jason Veasey, Warren Gottsegen and Benjamin Bronston (collectively, "Transferors") and TDMM Cable Funding, LLC ("TDMM" and, together with Benchmark and the Transferors, the "Applicants"), this letter is to advise the Commission of a Purchase Agreement (the "Agreement") whereby TDMM will acquire 100% of the limited liability company membership interests of Benchmark from the Transferors (the "Acquisition"). **The Parties are also requesting that the Commission waive the verification requirements of Florida Administrative Code Rule 25-4.118.**

It is our understanding, based upon review of the applicable statutes and regulations, that this transaction does not require prior Commission approval. Accordingly, absent written notice to the contrary within thirty (30) days of the date of this letter, the parties will proceed to consummate the transaction in a timely fashion.

Benchmark is a Louisiana limited liability company with principal offices located at 106 Metairie Lawn, Suite 220, Metairie, LA 70001. Benchmark is a certified local and long distance telecommunications provider in this State<sup>1</sup>.

<sup>1</sup> Benchmark provides resold long distance telecommunications services in this State pursuant to authority granted in Docket No. 041407-TI on June 20, 2005 (IXC) and Docket No. 041406-TX, Order No. PSC 05-0388-CO-TX, now Intrastate Registration TJ778.

DOCUMENT NUMBER-DATE

08924 AUG 28 09

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August 27, 2009

Transferors Guidry, Veasey, Gottsegen and Bronston are individuals residing in the states of Louisiana, Alabama, Louisiana and Texas, respectively. Benchmark is 100% owned by the Transferors (i.e. 25% each by Mark Guidry, Jason Veasey, Warren Gottsegen and Benjamin Bronston).

TDMM is a Florida limited liability company with principal offices 5000 SW 75th Avenue, Suite 103, Miami, FL 33155. TDMM is not authorized to provide telecommunications services in this State. TDMM currently owns and operates, either directly or indirectly through wholly-owned subsidiaries, cable, high-speed Internet and information systems at three communities in the State of Florida: (i) the Keys Cove community located in the Miami-Dade County; (ii) the Cutler Cay community located in Miami-Dade County; and (iii) the Little Harbor community located in Hillsborough County.

The Acquisition contemplates the following:

- a. TDMM will receive ownership, right, title and interest in and to 100% of the limited liability company interests of Benchmark from the Transferors.
- b. The Transferors will receive the purchase price set forth in the Agreement from TDMM.
- c. As a result of the foregoing, Benchmark will become a wholly owned subsidiary of TDMM.

Applicants respectfully submit that the Acquisition would enhance Benchmark's ability to compete effectively in this State. With the backing of TDMM, Benchmark will solidify its financial condition, expand its reach and be able to continue to serve its customers with intrastate communications needs. TDMM is well-qualified to consummate the Acquisition. The technical, managerial and financial personnel of Benchmark will assist TDMM with the operation of the acquired business after consummation of the Acquisition. Information on TDMM's management team is attached hereto.

The Acquisition will serve the public interest in that it will serve to create an increased level of operating efficiency which generally will serve to enhance the overall capacity of TDMM to compete in the marketplace and to provide telecommunications services for a greater number of consumers in this State at competitive rates.

Applicants emphasize that the Acquisition will not change the rates, terms and conditions under which Benchmark's customers will receive service. The Acquisition will benefit Benchmark

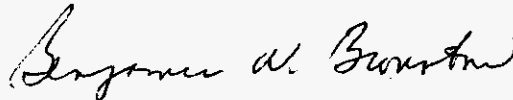
customers by enabling them to continue to receive the same high quality services previously rendered to them. Accordingly, approval of the Acquisition will not in any way be detrimental to the public interests of this State.

Applicants do not request transfer of Benchmark's Certificates of Public Convenience and Necessity, or other operating authority, to TDMM. Rather, because TDMM is purchasing 100% of Benchmark's limited liability company membership interests and Benchmark will thereby become a wholly owned subsidiary of TDMM, Benchmark will retain its Certificates of Public Convenience and Necessity and will continue to service its customers pursuant thereto.

The parties are forwarding this letter to the Commission for informational purposes only, to be included in the appropriate files. Absent receipt of written notification to the contrary within thirty (30) days of the date of this letter, the Applicants will proceed under the understanding that no approval or other formal action is required by the Commission prior to consummation of the proposed transaction.

Enclosed are the original and six (6) copies of this letter. Please return one (1) of the copies file-stamped in the envelope provided. If you need any further information or have any questions regarding the matters discussed herein, please do not hesitate to contact me. Thank you for your assistance in this matter.

Respectfully submitted,



Benjamin W. Bronston *(initials)*  
Nowalsky, Bronston & Gothard  
A Professional Limited Liability Company

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Fax: (713) 583-9720

[bbronston@nbglaw.com](mailto:bbronston@nbglaw.com)

Counsel for Benchmark, Transferors and TDMM