

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 001536-TP
ORDER NO. PSC-00-2230-PAA-TP
ISSUED: November 22, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING PETITION FOR TRANSFER OF AND NAME CHANGE ON
CERTIFICATE, GRANTING ELIGIBLE CARRIER DESIGNATION, AND FINDING
CARRIER SERVICES AGREEMENT EFFECTIVE

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.

I. Background

On October 5, 2000, Vista-United Telecommunications (Vista) and Smart City Telecommunications LLC (Smart City) filed a joint

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petition for transfer of and name change on Local Exchange Telecommunications (LEC) Certificate No. 1971 and Interexchange Telecommunications Company (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.

On October 11, 2000, Counsel for Smart City and Vista 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.

II. Transfer of and Name Change on Certificate

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 15 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.

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 us that the transfer is in the public interest. We find that 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.

III. Designation as an Eligible Carrier

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, we find that the company should be designated as an eligible telecommunications carrier.

IV. Carrier Services Agreement

Paragraph 7.10 of the Asset Purchase Agreement between Vista 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." We note that such a request is unusual but we analogize the CSA to a tariff. Tariff filings by price regulated LECs such as Vista are presumptively valid.

On October 31, 2000, our 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'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

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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 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. We have reviewed the filing, and there does not appear to be any substantive conflict with applicable statutes.

Upon consideration, we find that the Carrier Services Agreement between Walt Disney World Co., et al. and Smart City Telecommunications LLC is presumed valid and is, therefore, effective. We 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, we believe that there is a high likelihood that the cost standard is satisfied and on this basis, we find that this action shall not be revisited absent a challenge.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Vista-United Telecommunications and Smart City Telecommunications LLC's Petition for Transfer of and Name Change on Certificate Nos. 1971 and 2442 to Smart City Telecommunications LLC is granted. It is further

ORDERED that Smart City Telecommunications LLC shall be designated as an eligible telecommunications carrier. It is further

ORDERED that the Carrier Services Agreement between Walt Disney World Co., et al. and Smart City Telecommunications LLC is presumed valid and is, therefore, effective as discussed in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540

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Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 22nd day of November, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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.

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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 Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 13, 2000.

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 docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.