

ORIGINAL

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re Petition of Covista, Inc. for Waiver of)
Rule 25-4.118, F.A.C., Local, Local Toll or)
Toll Provider Selection in connection with the)
Transfer of Certain Commercial Long Distance)
Customers from Covista, Inc. to PAETEC)
Communications, Inc.)
_____)

Docket No. 040607-77

Filed: June _____, 2004

PETITION FOR WAIVER

Covista, Inc. ("Covista") and PAETEC Communications, Inc. ("PAETEC") (Covista and PAETEC, together, "Petitioners"), hereby petition the Florida Public Service Commission (the "Commission") for waiver of Rule 25-4.118, Florida Administrative Code, to allow Covista to transfer to PAETEC certain commercial long distance customer accounts in Florida without obtaining individual authorization and verification from each of Covista's customers.

Concurrent with the filing of this Petition, Petitioners have filed a letter with the Commission notifying it of the proposed transfer to PAETEC of certain commercial long distance customer accounts of Covista. The proposed transaction also is described in greater detail in Section IV below.

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In support of this Petition, Petitioners state as follows:

I. DESCRIPTION OF PETITIONERS

A. PAETEC Communications, Inc. ("PAETEC")

PAETEC Communications, Inc. is a privately held Delaware corporation with headquarters located at One PAETEC Plaza, 600 Willowbrook Office Park, Fairport, New York. PAETEC is a wholly owned subsidiary of PAETEC Corp., a privately held Delaware corporation, whose

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principal business is telecommunications.⁵ PAETEC is authorized to provide intrastate interexchange telecommunications services in the State of Florida pursuant to Certificate No. 5757, granted by the Commission in Docket No. 980916-TI (“Certificate”).⁶ Further information concerning PAETEC’s technical, managerial and financial qualifications to provide service was submitted with its application for certification and is, therefore, a matter of public record. PAETEC respectfully requests that the Commission take official notice of that information and incorporate it by reference herein.

B. Covista, Inc. (“Covista”)

Covista is a New Jersey corporation with principal offices located at 721 Broad Street, Suite 200, Chattanooga, Tennessee. Covista is a wholly owned subsidiary of Covista Communications, Inc., a publicly traded New Jersey corporation (NASDAQ symbol: CVST) whose principal business is telecommunications. Covista is authorized to provide intrastate interexchange telecommunications services in the State of Florida pursuant to Certificate No. 3157, granted by the Commission in Docket No. 921187-TI.⁷

II. CONTACTS

Correspondence, notices and communications regarding this Petition should be directed to Petitioners’ respective counsel of record:

⁵ PAETEC Corp., a holding company, holds no regulatory licenses from this or any other regulatory commission.

⁶ PAETEC is also authorized to provide alternative local exchange services in Florida pursuant to Certificate No. 5756, granted by the Commission in Docket No. 980919-TX.

⁷ The Certificate was originally granted to TotalTel USA, then transferred to TotalTel, Inc. TotalTel, Inc. then changed its name to Covista. Covista is also authorized to provide competitive local exchange services in Florida pursuant to Certificate No. 4771, granted in Docket No. 961114-TX.

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III. RULE TO BE WAIVED

Pursuant to Rule 25-4.118, Florida Administrative Code, a customer's interexchange telecommunications services provider shall not be changed without the customer's authorization. To make such a change, a carrier must (1) obtain a letter of agency from the customer requesting the change, (2) obtain confirmation from the subscriber via a customer-initiated call, or (3) utilize an independent third party to verify the subscriber's order. The requirements of Rule 25-4.118 are applicable to interexchange carriers through incorporation by reference in Rule 25-24.490. Petitioners respectfully request a waiver of Rule 25-4.118 so that they may transfer to PAETEC certain commercial long distance customer accounts of Covista. As explained more fully below, affected Covista customers will be notified in writing of the transfer of their service to PAETEC and of their rights under federal law pursuant to the applicable rule of the Federal Communications Commission ("FCC"), 47 C.F.R. § 64.1120(e).

IV. DESCRIPTION OF TRANSACTION

PAETEC has determined that the acquisition of certain of Covista's commercial long distance customer accounts will enable PAETEC to expand its operations in a cost-efficient manner, thereby enhancing its competitive position and ability to provide integrated telecommunications services to customers in Florida as well as other states. To that end, PAETEC and Covista have entered into an agreement whereby PAETEC will acquire certain of Covista's commercial long distance customer accounts, including some accounts in Florida (the "Florida Customers").

To ensure a seamless transition, the Florida Customers will be given not less than 30 days prior written notice of the proposed transfer, in compliance with the FCC's rule governing carrier-to-carrier customer base transfers.⁸ Petitioners emphasize that the proposed transaction involves neither the transfer nor abandonment of Covista's Certificate nor does it involve any plan by Covista to discontinue service to Florida customers. Following closing, the Florida Customers will receive from PAETEC the same services they currently receive from Covista. PAETEC will continue to provide intrastate long distance services to the Florida Customers pursuant to its own Certificate, as referenced above. Covista, in turn, will continue to operate pursuant to its Certificate, without any interruption in or change of service to that portion of its Florida customer base that will not be transferred to PAETEC.

PAETEC will also amend its Florida tariffs, to the extent necessary, to include the rates and charges that apply to the services purchased by the Florida Customers. As a result, the

⁸ 47 C.F.R. § 64.1200(e).

proposed transfer will be virtually transparent to the Florida Customers in terms of the rates and terms and conditions of service that these customers currently receive.

V. PUBLIC INTEREST CONSIDERATIONS

Grant of this Petition will serve the public interest by enabling PAETEC to expand its operations in a cost-effective manner, thereby enhancing its competitive position and ability to provide a broad range of integrated telecommunications services to Florida consumers. By permitting PAETEC to strengthen its competitive position and accelerate the offering of innovative products and services, the proposed transaction will ultimately enhance competitive choices for Florida consumers.

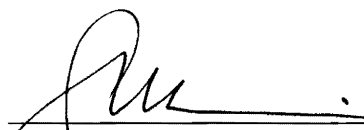
As noted above, the Florida Customers will be given prior written notice of the transfer of their account to PAETEC, in compliance with the FCC's customer notice rule. Following the transfer, the Florida Customers will continue to receive services which will be consistent with the quality of services currently provided by Covista and which will be supported by PAETEC's experienced and well-qualified management team. As a result, the proposed transfer will be virtually transparent to the Florida Customers in terms of the rates and terms and conditions of service that these customers currently receive. The public interest therefore will be served by approval of this Petition.

The Commission has granted petitions for waiver in similar circumstances in several prior cases, including Order No. PSC-03-0252-PAA-TP (Mpower Communications Corp./Florida Digital Network, Inc.) in Docket No. 030080; Order No. PSC-01-0812-PAA-TP (Verizon Florida, Inc./Select Services Inc.) in Docket No. 010030-TP; Order No. PSC-00-1520-PAA-TI (PNG Telecommunications/Broadwing) in Docket No. 000764-TI; and Order No. PSC-00-2198-PAA-TI (TTI National/Minimum Rate Pricing) in Docket No. 000825-TI.

Petitioners desire to complete the proposed acquisition as soon as possible to more speedily bring about the competitive benefits that will inure from permitting Covista to transfer the Florida Customers to PAETEC. Petitioners therefore respectfully request that the Commission grant approval of this Petition as soon as possible but not later than July 31, 2004.

WHEREFORE, Petitioners request that the Commission grant the Petition and waive the requirements of Rule 25-4.118, Florida Administrative Code, to permit Covista to transfer to PAETEC certain commercial long distance customer accounts, as described herein.

Respectfully submitted,



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Dated: June 24, 2004