

Control Number: 39867



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DOCKET NO. 39867

APPLICATION OF 365 WIRELESS,  
LLC FOR A SERVICE PROVIDER  
CERTIFICATE OF OPERATING  
AUTHORITY

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PUBLIC UTILITY COMMISSION  
OF TEXAS

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## COMMISSION STAFF'S FINAL RECOMMENDATION

The Staff (Staff) of the Public Utility Commission of Texas (Commission) files this final recommendation regarding the October 27, 2011, filing by 365 Wireless, LLC (Applicant) applying under § 54.151 of the Public Utility Regulatory Act<sup>1</sup> for approval of a Service Provider Certificate of Operating Authority (SPCOA) to provide resale only telecommunications services within the entire state of Texas.

### I. PURA/Substantive Rule Requirements

Pursuant to PURA §54.154(b)(3), the applicant must demonstrate that it has the technical ability to provide the requested services and that the services meet the requirements of PURA §§54.151 - 54.159. Additionally, the applicant must demonstrate compliance with the customer protection requirements of P.U.C. SUBST. R. 26.111. Finally the applicant must establish that it has met the financial qualifications outlined in PURA §54.154(b)(3) and P.U.C. SUBST. R. 26.111.

### II. Staff Analysis

Staff has examined the applicant's SPCOA application to determine if it meets the requirements of PURA §§54.151 - 54.159 and P.U.C. SUBST. R. 26.111. Gordon Van Sickle of the Commission's Infrastructure Reliability Division reviewed the application to determine whether it meets the technical requirements of PURA § 54.154(b)(3) and PURA §§ 54.151 - 54.159 and the customer protection requirements of P.U.C. SUBST. R. 26.111. Anjuli Winker of the Commission's Financial Review Section reviewed the application to determine whether it meets the requirements of PURA §54.154(b)(3) and

<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 – 66.017 (West 2007 & Supp. 2011) (PURA).

P.U.C. SUBST. R. 26.111. Staff recommendations are included as attachments to this pleading and provide more specific information concerning the applicant's satisfaction of the technical, customer protection, and financial requirements.

### **III. Staff Recommendation**

After reviewing the applicant's application and supplemental financial information filed in this docket, and as evidenced by the attached recommendations of the Staff members referenced above, Staff has determined that the applicant has met the requirements of PURA §§54.151 - 54.159 and P.U.C. SUBST. R. 26.111 for approval of a Service Provider Certificate of Operating Authority (SPCOA) to provide resale only telecommunications services within the entire state of Texas.

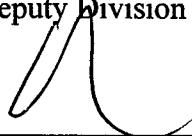
Staff respectfully requests that an order be issued consistent with this recommendation.

Dated: December 12, 2011

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director-Legal Division

Keith Rogas  
Deputy Division Director-Legal Division



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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on December 12, 2011, in accordance with P.U.C. Procedural Rule 22.74.



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Brennan J. Foley

# *Public Utility Commission of Texas*

## **Memorandum**

**TO:** Document Management

**FROM:** Gordon H. Van Sickle, Senior Analyst – Infrastructure Reliability Division *GHVS*

**DATE:** December 12, 2011

**SUBJECT:** Docket No. 39867: *Application of 365 Wireless, LLC for a Service Provider Certificate of Operating Authority* *WS*

### **Summary of Conclusions and Recommendations**

Staff (Staff) of the Public Utility Commission of Texas finds that 365 Wireless, LLC meets the technical criteria for a Service Provider Certificate of Operating Authority (SPCOA), pursuant to the Public Utility Regulatory Act (TEX. UTIL. CODE ANN. §§54.151 - 54.159) (PURA) and the Public Utility Commission of Texas (PUC) Substantive Rule 26.111. Staff recommends that 365 Wireless, LLC be deemed technically qualified to be granted an SPCOA to provide Resale- Only telecommunications services for the exchanges of all of the incumbent local exchange carriers (ILECs) throughout the State of Texas. Staff recommends approval of this application as submitted. If approved, the Applicant has requested that the name on the SPCOA certificate be "365 Wireless, LLC".

### **Background Information on Application**

On October 27, 2011, 365 Wireless, LLC filed an application seeking an SPCOA. Order No. 1 was issued on October 28, 2011, entering a protective order, establishing a procedural schedule, and determining filing and service procedures. On November 3, 2011, Staff filed its recommendation on eligibility. Order No. 2 was issued on November 7, 2011, certifying eligibility. On November 29, 2011, Staff filed a recommendation on deficiency/completeness of this application. Order No. 3 was issued on November 30, 2011, notifying that Staff deems the application is insufficient and incomplete. On December 6, 2011, 365 Wireless, LLC filed supplemental financial information confidentially in response to Order No. 3.

### **Description of Services**

365 Wireless, LLC is a Georgia limited liability company that was established on March 29, 2011. The Secretary of State (SoS) issued an authorization to transact business in the State of Texas to 365 Wireless, LLC under file number 801441024 as a Foreign limited liability company as of June 16, 2011. We checked the requested name against the certificate of operating authority (COA), service provider certificate of operating authority (SPCOA) and incumbent local exchange company (ILEC) official lists and found no similar names. We

checked the Interexchange Carriers (IXCs) official list and found no similar names. After reviewing the existing names, Staff concludes that the Applicant's requested name "365 Wireless, LLC" is distinctive and acceptable.

365 Wireless, LLC does not hold a service provider certificate of operating authority (SPCOA), certificate of operating authority (COA) or a certificate of convenience and necessity (CCN) for any part of the service area covered by this application in Texas. The Applicant has applied for and been granted telecommunications authority in the following states: Georgia, Florida, New York, and Massachusetts. The applicant has never had any telecommunications authority revoked in any state.

365 Wireless, LLC intends to provide Resale-Only local exchange service. 365 Wireless, LLC intends to provide Business Only: POTS and Wireless. 365 Wireless, LLC has established a toll-free customer service number (888) 820-4544. 365 Wireless, LLC has established a principal office phone number (888) 820-4544, an office fax number (970) 722-6231, website address ([www.365wireless.net](http://www.365wireless.net)) and email address ([legal@365wireless.net](mailto:legal@365wireless.net)).

365 Wireless, LLC requested that its service area be the entire State of Texas. However, a Resale-Only provider cannot be granted the entire State of Texas. A Resale-Only provider can be granted the exchanges of all of the ILECs throughout the State of Texas; which is the closest equivalent of what the Applicant requested.

### **Additional Information Requested for Technical Review**

365 Wireless, LLC was not requested to provide any additional or clarifying technical information concerning this application. However, the Applicant was requested to provide additional or clarifying financial information in Order No. 3; which it did in its November 30, 2011 confidential submittal.

### **Technical Qualifications**

365 Wireless, LLC's management consists of key personnel that have accumulated over 60 years of telecommunications experience. Mr. Ron Grob – Senior Vice President New Business Development – has over 20 years of telecommunications experience in management, network design, network deployment, 911 trunking, and design and maintenance of billing software packages. Mr. Joseph White – Vice President of Operations – has over 10 years of telecommunications experience in management, network operations, network engineering, and network provisioning. Mr. Tony Cash – General Counsel - has over 20 years of telecommunications experience in management, business/commercial law, corporate law and technology law. Mr. Clive March – Chief Financial Officer – has over 10 years of telecommunications experience in management, accounting, merger and acquisitions, capital growth and finances.

Staff checked the following officers of Telefonica USA, Inc.'s against its Flagged Personnel List: Mr. Ron Grob (Senior Vice President New Business Development), Mr. Joseph

White (Vice President of Operations), Mr. Tony Cash (General Counsel), and Mr. Clive March (Chief Financial Officer). None of the listed officers are on the Flagged Personnel List. 365 Wireless, LLC stated that none of its officers have ever been convicted of a felony.

### **Compliance Check**

A check of the Texas Comptroller's Office concerning the Franchise Tax Account Status for 365 Wireless, LLC (Taxpayer ID# 32044475609) revealed the following: **IN GOOD STANDING NOT FOR DISSOLUTION OR WITHDRAWAL through May 15, 2012.**

365 Wireless, LLC indicated through its responses to the PUC's Service Quality Questionnaire that it will meet the quality of service standards as they are applicable.

### **Complaint Check**

After checking the database of the Customer Protection Division (CPD), Staff has determined that 365 Wireless, LLC has zero registered complaints. 365 Wireless, LLC (has no affiliates) filed its number of customers in the past 24 months as zero customers. The complaint to customer ratio is below the 6% complaint threshold; therefore no further investigation is warranted.

A check of the PUC Enforcement & Investigations Database revealed that 365 Wireless, LLC. has no outstanding notices of violations (NOV). Since 365 Wireless, LLC is a new applicant; it has not opened an access line account. Upon Commission approval of its requested SPCOA, 365 Wireless, LLC shall establish an access line account and submit quarterly reports.

### **Conclusion**

Based on the information provided by the applicant and the review and analysis of this application, Staff finds that 365 Wireless, LLC is technically qualified to provide Resale-Only telecommunications services for the exchanges of all of the ILECs throughout the State of Texas. The applicant has requested that the SPCOA be issued in the name of "365 Wireless, LLC".

# *Public Utility Commission of Texas*

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## **Memorandum**

December 12, 2011

TO: Brennan Foley, Legal      *BS*  
FROM: Anjuli Winker, Financial Analysis  
RE: Docket No. 39867 Application of 365 Wireless, LLC for a Service Provider Certificate of Operating Authority

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### **Recommendation**

The scope of my recommendation is limited to the financial qualification for a SPCOA certification pursuant to P.U.C. Subst. R. §26.111 (f). 365 Wireless, LLC has satisfied the financial requirements of P.U.C. Subst. R. §26.111 (f). I recommend that the application be approved from a financial perspective.

### **Applicant**

365 Wireless, LLC was formed as a Georgia limited liability corporation on March 29, 2011. 365 Wireless, LLC has no parent company and no affiliates. 365 Wireless, LLC affirms that it has no history of bankruptcy, dissolution, merger, or acquisition in the past two calendar years.

### **Action Requested**

365 Wireless, LLC is requesting an SPCOA to provide resale only competitive local exchange services throughout the state of Texas.

### **Analysis and Conclusions**

To obtain SPCOA certification, P.U.C. Subst. R. §26.111 (f) requires that an SPCOA applicant demonstrate a minimum amount of shareholders' equity. Per the rule, the action requested by 365 Wireless, LLC requires a minimum shareholders' equity of \$25,000. To demonstrate the required shareholders' equity and obtain SPCOA certification, the SPCOA applicant must provide audited balance sheet with independent auditor's report for its most



recent quarter or unaudited balance sheet along with an affidavit attesting to the accuracy of the balance sheet from an executive officer for its most recent quarter.

To demonstrate financial ability, 365 Wireless, LLC provided unaudited balance sheets for the most recent quarter supported by the required affidavit under protective order. The financial documents show shareholders' equity in excess of the minimum requirement.