

DT 99-110

MAXXIS COMMUNICATIONS, INC.

**Petition to Acquire Assets of
Colorado River Communications Corporation**

Order Approving Acquisition With Conditions

O R D E R N O. 23,323

October 25, 1999

On July 27, 1999, Maxxis Communications, Inc. (Maxxis) filed a letter seeking approval of its acquisition of the long distance customer base of Colorado River Communications Corporation (CRC). Both Maxxis and CRC are registered competitive toll providers in New Hampshire.

The proposed acquisition results from an Agreement for 1 Plus Services entered into by the two carriers on February 18, 1997, whereby Maxxis would market CRC's long distance services as an independent sales agent, thus increasing CRC's customer base. At the date Maxxis generated a particular level of revenue for CRC, Maxxis would obtain the right to acquire the assets, i.e., customer lists and accounts, used to serve those customers it had recruited. This docket is before us because Maxxis has reached the triggering revenue level. Once the acquisition is approved, Maxxis avers that CRC will cease serving those customers. CRC will continue to provide long distance services to other customers not recruited by Maxxis.

Maxxis states that it already filed a tariff with the

Commission, by which the customers will continue to receive service at the same terms and condition as offered by CRC. Maxxis will notify customers, in writing, of the transfer of assets and of customers' opportunity to cancel their service at no charge. Hence, Maxxis claims, customers will suffer no interruption or diminution in service quality and the transfer of assets will be essentially transparent.

We find that Maxxis' acquisition of these particular assets of CRC is in the common good and public interest, a finding necessitated by RSA 374:30 to approve the transfer of a public utility's franchise, works, or system. With regard to CRC the system to be transferred consists of customer base and computerized billing systems. We addressed the issue of customer base transfer in our Order No. 23,234 (June 14, 1999) in DT 99-077, Re RSL COM U.S.A., Inc. (RSL), a case of first impression. On page 4 in that order, we "noted that we cannot approve the transfer of a 'customer base.'" Further elucidating the intent of our words, we determine here and in concurrent dockets that a transfer of a customer base in New Hampshire is conditioned or limited by RSA 374:28-a. RSA 374:28-a prohibits changes of a customer's service provider without the customer's knowledge or consent, a practice known as slamming. Therefore, we will approve the transfer of a customer base only to the extent that the acquisition of each customer's long distance service is conditioned on notice to the customer of his/her opportunity to

choose, without additional charge, another long distance carrier not less than fourteen days after the date of the notice.

As we stated in RSL, "[I]t is imperative that customers have adequate advance notice that a carrier proposes to stop serving them, of their ability to choose another carrier, and of the identity of the carrier that will serve them if they do not make a choice by the end of the notice period." Id. p. 3. We commend Maxxis for recognizing this imperative and we will approve Maxxis' acquisition with a condition that its notification of customers must conform with our discussion above. In particular, Maxxis must provide customers with a cost-free opportunity to choose another carrier, not merely to cancel service.

Based upon the foregoing, it is hereby

ORDERED, that the transfer of Colorado River Communications Corporation to Maxxis Communications, Inc. is hereby APPROVED with the condition that the proposed customer notification provide no less than 14 days during which customers may request a change of service provider, at no charge.

By order of the Public Utilities Commission of New
Hampshire this twenty-fifth day of October, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary