

DT 99-158

**RCN TELECOM SERVICES OF PENNSYLVANIA, INC., RCN TELECOM
SERVICES, INC., RCN TELECOM SERVICES OF NEW HAMPSHIRE,
INC., AND RCN LONG DISTANCE COMPANY**

Pro Forma Corporate Restructuring

**Order Approving Mergers, Transfer of Certificates of Authority
and Corporate Restructuring**

O R D E R N O. 23,467

May 8, 2000

I. PROCEDURAL HISTORY AND BACKGROUND

In 1997, RCN Long Distance Company (RCN LD) received authorization to provide intrastate interexchange services in the State of New Hampshire via Authorization No. IXC 23197 dated September 13, 1997. RCN Telecom Services of New Hampshire, Inc. (RCN of NH) received authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic by way of Order No. 23,192 (April 6, 1999).

On September 24, 1999, RCN Telecom Services of Pennsylvania, Inc. (RCN of PA); RCN Telecom Services, Inc. (RCN TS); RCN of NH, a wholly owned subsidiary of RCN TS; and RCN LD, a subsidiary of RCN of PA (collectively the Petitioners) filed with the New Hampshire Public Utilities Commission (Commission), a joint petition requesting authority to merge RCN of NH, RCN TS, and RCN LD into RCN of PA and to

transfer RCN of NH's and RCN LD's telecommunication certificates of authority to RCN of PA. The petition asserts that RCN of PA's name will be changed to RCN Telecom Services, Inc. and it is this renamed company that will assume the certifications and operations of RCN of NH and RCN LD. The petition also advises the Commission that RCN of PA will not assume the certification or operations of an indirect subsidiary, Starpower Communications, LLC. Starpower will remain an independent corporate entity and RCN of PA will become Starpower's indirect corporate parent.

RCN of PA, RCN of NH, and RCN LD also request approval, *nunc pro tunc*, for a Credit Facility whereby RCN of PA, as borrower, and RCN of NH and RCN LD, as guarantors, will assume certain obligations under a RCN Corporation credit agreement. The petition also asks that the Commission authorize, *nunc pro tunc*, RCN NH and RCN LD to mortgage their licences in New Hampshire, as the Credit Facility is secured by the assets of RCN Corporation, which include the licenses of RCN of NH and RCN LD.

II. DESCRIPTION OF THE TRANSACTION

A. Corporate Restructuring

The Petitioners request:

- (1) RCN LD certificate of authority to provide

intraLATA toll service in New Hampshire be transferred to RCN of PA; and (2) RCN of NH certificate of authority to provide switched and non-switched intrastate local exchange telecommunications in the service area of Bell Atlantic to be transferred to RCN of PA; and

(3) authority for the proposed corporate restructuring that will include a merger of RCN LD into RCN of PA; a merger of RCN of NH into RCN TS, which will then be merged into its direct parent RCN of PA; and, a name change of RCN of PA to RCN Telecom Services, Inc.

The Petitioners assert that the proposed corporate restructuring is strictly *pro forma* and will not adversely affect the provision of telecommunications services in New Hampshire as the rates, terms, service and operation of RCN of NH and RCN LD will not change.

In compliance with Puc Rules Chapter 1300, RCN of PA submitted data to support its assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01 (b), (e), (f), and (g). Further information regarding RCN Corporation and its subsidiaries is contained in the record of DE 98-081. Staff has reviewed all the data and affirms RCN of PA has evidenced that it meets all Competitive Local Exchange

Carrier standards for competence, resources and qualifications.

B. Credit Facility

Pursuant to RSA 369:2, the Petitioners are requesting Commission approval, *nunc pro tunc*, of a Credit Facility and authorization, *nunc pro tunc*, to mortgage their New Hampshire Telecommunication Certificate of Authorities.

On June 30, 1999, RCN Corporation, the corporate parent, and its subsidiaries entered into a \$1 Billion Senior Secured Credit Facility with Chase Manhattan Bank and others on June 3, 1999. The Credit Facility is secured by the assets of RCN Corporation including the licenses of RCN of NH and RCN LD. The Credit Facility consists of a revolving credit facility and two loan facilities with various terms that do not exceed eight years. Proceeds from the Credit Facility will be used for construction of telecommunication facilities throughout the United States.

III. COMMISSION ANALYSIS

RSA 374:30 requires a finding that the transfer of a utility's "franchise, works or system" is for the public good. RCN Corporation asserts that the proposed corporate restructuring will enable the company to reduce its administrative and operating expenses; realize operational and

management efficiencies and other corporate benefits, thus enhancing its competitive position in New Hampshire. The Petitioners represent that the transaction will be transparent to RSN of NH and RSN LD customers and will not adversely affect the provision of telecommunications in New Hampshire but will increase the financial strength of the entity that is providing services in New Hampshire.

We have found in the past that RCN of NH has evidenced technical, managerial, and financial competence. In this instance Staff has reviewed the updated financials filed with this petition and believes the Petitioners remain financially and operationally qualified. Accordingly, we find the proposed transfer of operating authority certificates of RCN LD and RCN NH to RCN of PA will result in no net harm, which is the standard by which we evaluate merger petitions. *See, Re Eastern Utility Associates*, 76 NH PUC 236 (1991). The transfer of control may in fact produce net benefits to RCN's customers. We will, therefore, approve the Petition, as it relates to the *pro forma* restructuring.

Upon approval of the petition, RCN of NH and RCN LD will refile its New Hampshire tariff to reflect RCN Telecom Services, Inc. as the operating entity. We also direct RCN of NH and RCN LD to provide notice to each customer of the

acquisition of RCN of NH and RCN LD by RCN of PA. We will not require that RCN of NH and RCN LD provide all customers with an opportunity to change carriers without additional charge.

We have also been asked to approve a credit facility and authorize RCN NH and RCN LD to mortgage their licenses in accordance with RSA 369:2. Pursuant to RSA 369:2 a utility may, with the approval of the Commission, mortgage its certificate of authority in order to secure its obligation under a credit facility. *See generally, Re ACC Corporation, 80 NH PUC 581 (1995).*

We note that RCN NH and RCN LD operate in the interexchange resale carrier market for which traditional rate of return regulation does not apply. Accordingly, the failure of an interexchange carrier as a result of inappropriate financing arrangements will be the burden of the company's stockholders and not harm the public interest. *See Re WilTel of New Hampshire, Inc., 79 NH PUC 671, 672 (1994).*

Nonetheless, we are concerned about the encumbrance of a certificate of authority which was specifically granted to a particular company based on a showing of financial, technical and operational competence. We have the same authority to revoke a certificate of authority as we have to grant one. *See Claremont Gas Light Company, 68 NH PUC 231, 251*

(1983)[citations omitted]. Moreover, a transfer of such certificate is subject to our approval. Thus, if the Company defaults on its credit facility we must approve the transfer of the certificate to any new holder. Any approval of the credit facility does not mean we approve the transfer should a default occur. We will, therefore, approve the mortgage in accordance with RSA 369:2 subject to our being notified if default occurs. Such notification is necessary in order that we may review the merits of the transfer at that time.

Based upon the foregoing, it is hereby

ORDERED, that the merger of RCN Telecom Services of New Hampshire, Inc. and RCN Long Distance Company with and into RCN Telecom Services of Pennsylvania, Inc. is hereby APPROVED; and it is

FURTHER ORDERED, that the assignment of RCN of New Hampshire, Inc.'s Certificate of Authority to provide local exchange telecommunications in New Hampshire is APPROVED; and it is

FURTHER ORDERED, that the assignment of RCN Long Distance Company's Certificate of Authority to provide intraLATA toll service in New Hampshire is APPROVED; and it is

FURTHER ORDERED, that the name change of RCN of Pennsylvania, Inc. to RCN Telecom Services, Inc. is APPROVED;

and it is

FURTHER ORDERED, that the Credit Facility and the mortgaging of RCN of New Hampshire, Inc.'s and RCN Long Distance Company's Certificate of Authority in New Hampshire is Authorized *nunc pro tunc*, as described herein.

By order of the Public Utilities Commission of New Hampshire this eighth day of May, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary