

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 09-136

UNION TELEPHONE COMPANY

Transfer of Assets to TDS Telecom

Order Approving Stipulation

ORDER NO. 25,045

November 20, 2009

APPEARANCES: Brian McDermott, Esquire, of Synergies Law Group, for Union Telephone Company; Frederick Coolbroth, Esquire, of Devine, Millimet & Branch, for TDS Telecommunications Corporation; Rorie Hollenberg, Esquire, of the Office of Consumer Advocate, for residential ratepayers; and Robert D. Hunt, Esquire, for the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

On July 31, 2009, Union Telephone Company d/b/a Union Communications (Union) and TDS Telecommunications Corporation (TDS Telecom) filed with the New Hampshire Public Utilities Commission (the Commission), a notification that TDS Telecom, Utel, Inc. (Utel), Union, Freedom Ring Communications (Freedom Ring) and Unex, Inc. (Unex) had entered into a Stock and Asset Purchase Agreement dated July 27, 2009 (the Agreement). Pursuant to the Agreement, Utel will transfer to TDS Telecom all of the issued and outstanding shares of capital stock of Union (the Union Stock). In addition, Freedom Ring and Unex, wholly owned subsidiaries of Utel, will transfer to TDS Telecom certain assets consisting primarily of the assets associated with, and the business of, providing customers in the Union service area with interstate and international toll service and internet service. The notification provides that TDS Telecom may designate one or more affiliate entities to hold title to the assets being transferred by Freedom Ring and Unex and that, after closing, TDS Telecom will control Union and the

business of providing interstate and international toll service and internet access service to customers within the Union service territory.

On August 13, 2009, the Office of Consumer Advocate (OCA) filed a letter notifying the Commission that it would be participating in this docket on behalf of residential ratepayers consistent with RSA 363:28. On August 20, 2009, the Commission issued an Order of Notice scheduling a prehearing conference and technical session. On September 17, 2009, the Commission conducted a prehearing conference as scheduled, allowing the parties the opportunity to present, in addition to their positions, argument on whether the petition is governed by RSA 369:8, RSA 374:33, or any other provision of law. On that same date, Staff and the parties conducted a technical session, agreed to a proposed procedural schedule and presented that schedule to the Commission at the prehearing conference.

On October 8, 2009, the Commission issued Order No. 25,024 denying the procedural schedule proposed during the prehearing conference and ordering the petitioners to file a detailed written representation that included: (1) clarification of the anticipated future operation of Union under TDS Telecom management (including whether they will be merged into TDS Telecom management/operations or function as a stand-alone entity); (2) any codes of conduct that will govern the relationship between Union and TDS Telecom; (3) changes, if any, to the Union billing system and a transition plan to move from one system to the other; (4) changes, if any, in customer support services, including location and staffing of call centers, if planned; (5) other operational changes as a result of the transaction including effect on employees, work location and management services to be provided by TDS Telecom; (6) changes, if any, to benefits for employees and retirees, as well as a transition plan to move from one benefits package to the other; (7) allocations from TDS Telecom to the operating company and a comparison of how

those services are currently provided; (8) TDS Telecom's investment plan for Union service territory; and (9) any further information regarding the relationship between Union, TDS Telecom, and affiliated entities that may be implicated by the transaction.

The Commission also ordered Staff and the parties to file a proposed procedural schedule within seven days after the date the petitioners filed their detailed written representation. Direct testimony of Michael C. Reed on behalf of TDS Telecom and Darren Winslow on behalf of Union was filed on October 16, 2009. On October 26, 2009, Staff and the parties filed a proposed procedural schedule, which was approved by Secretarial Letter on October 27, 2009.

Following discovery and negotiations, a Stipulation among TDS Telecom, Union, the OCA, and Staff was filed with the Commission on November 10, 2009. In addition, the Petitioners requested a waiver of the filing timeframe set forth within Puc. 203.20(e) and a corresponding modification to the procedural schedule, which was granted at the hearing held on November 13, 2009.

II. CURRENT STRUCTURE OF COMPANIES

Union Telephone Company d/b/a Union Communications

Union has its principal place of business at 7 Central Street, Farmington, New Hampshire and provides telecommunications service, including but not limited to exchange service, intrastate toll and exchange access service, to all or portions of the towns of Alton, Barnstead, Center Barnstead, Farmington, Gilmanton, New Durham and Strafford, New Hampshire. All of the outstanding stock of Union is owned by Utel, Inc., a New Hampshire corporation located in Farmington, New Hampshire (Utel), making Utel Union's parent company.

Freedom Ring Communications

Freedom Ring Communications, LLC (Freedom Ring) is a Maine limited liability company and a wholly-owned subsidiary of ACN, Inc., which is a New Hampshire corporation and a wholly-owned subsidiary of Utel. Freedom Ring's Union Long Distance Division provides interstate and international toll service solely to the Union service territory.

Unex, Inc.

Unex, Inc. is a New Hampshire corporation and a wholly-owned subsidiary of Utel. Among other things, Unex provides internet access service to Union and customers within the Union service territory. Unex, as a provider of internet services, is not a telephone utility under New Hampshire law.

Telephone and Data Systems, Inc.

Telephone and Data Systems, Inc. (TDS) is a Delaware corporation and the parent company of subsidiaries that provide, among other things, local exchange and exchange access service in 28 states throughout the United States, including New Hampshire. TDS' wholly-owned subsidiary, TDS Telecom, is the sole stockholder of more than 100 independent local exchange carriers (LECs) in the United States, including four LECs doing business in New Hampshire subject to the jurisdiction of this Commission (Kearsarge Telephone Company, Merrimack County Telephone Company, Wilton Telephone Company, Inc. and Hollis Telephone Company, Inc.).

III. INITIAL POSITIONS OF THE PARTIES AND STAFF**A. TDS Telecom and Union**

TDS Telecom and Union asserted that the transaction at issue in this docket is subject to RSA 369:8, II(b) and that the Commission should, therefore, set a schedule consistent with the

timeframes established in that provision. In essence, their view was that because the transaction consists of an acquisition involving parent companies of a public utility whose rates, terms and conditions of service are regulated by the Commission, it is governed by RSA 369:8, II(b).

B. Staff

Staff took the position that RSA 369:8, II(b) does not apply to this transaction, asserting that this provision applies instead to the corporate merger between parent companies, or to the acquisition of parent companies by other parent companies, not to parent companies buying and selling shares of a New Hampshire public utility. Staff asserted that based upon RSA 374:30 and 374:33 the Commission must determine that the transfer is lawful, proper, for the public good and in the public interest.

C. Office of Consumer Advocate

The OCA agreed with Staff that RSA 369:8 does not govern the transaction. It contended that pursuant to RSA 374:30 and 374:33 the Commission must determine that the transfer is lawful, proper, for the public good and in the public interest.

IV. STIPULATION PROVISIONS

All parties to this docket entered into a Stipulation, dated as of November 6, 2009, which constitutes their recommendation with respect to the resolution of this Docket. Pertinent provisions of the Stipulation are re-stated below.

1. This Stipulation, dated as of November 6, 2009, is entered into among TDS Telecom, Union, the OCA, and the Staff and constitutes their recommendation with respect to the resolution of this Docket. Under this Stipulation, the Parties and Staff agree to this joint submission as their proposed resolution of all issues in this Docket.

2. Based upon the pleadings, the prefiled testimony, and the data request responses by TDS Telecom and Union, and with the additional terms set forth in this Stipulation, the Parties and Staff agree that TDS Telecom has the requisite financial, managerial and technical capacity to operate the Union franchise. Therefore, the Parties and Staff agree the transactions proposed

by TDS Telecom and Union in their Notification should be approved pursuant to RSA 369:8, II(b), RSA 374:30 and RSA 374:33, as applicable, subject to the conditions herein contained.

3. TDS Telecom and Union will not file with the Commission at any point in time earlier than 14 months following the transition from Union's present operational support systems for regulated services to TDS Telecom's operational support systems for regulated services (the "Transition", and the fourteen month period following the Transition being the "Stay Out Period") a petition for an increase in Union's New Hampshire basic retail rates to take effect during the Stay Out Period. During the Stay Out Period, no other signatory to this Stipulation will commence or request that the Commission commence the opening of a docket in order to seek a decrease of any basic retail rates of Union to be effective during the Stay Out Period. For the avoidance of doubt, Union may not request the commencement of a docket seeking to increase any of Union's basic retail rates and no other signatory may request the commencement of a docket seeking to decrease Union's basic retail rates until that date which is one day following the Stay Out Period. Notwithstanding the foregoing, Union, Staff, or the OCA shall have the right to petition the Commission to allow a retail rate case filing, and the Commission shall have the right to initiate a retail rate investigation, in the event of exogenous circumstances causing excessively low or high earnings (i.e., changes in federal, state or local government taxes, mandates, rules, regulations or statutes), as long as the change in rates resulting from such rate proceeding does not take effect until that date which is one year following the Transition.

4. TDS Telecom will continue to make available to Union customers those DSL offerings set forth within Exhibit A (attached to the stipulation) at the same rates, terms and conditions as set forth within Exhibit A for a period of one year following the Transition.

5. No transactional merger expenses shall be reflected in Union's retail rates.

6. TDS Telecom agrees to adopt Union's retail and access tariffs in effect as of the date of the closing of the transactions contemplated in the Notification (the "Closing Date") and will continue to file such tariffs with the Commission pursuant to RSA 378:1 and Puc 411.01, as applicable.

7. TDS Telecom shall adhere and cause its New Hampshire subsidiaries to adhere to the following service quality reporting requirements:

(A) TDS Telecom shall continue to file on a non-confidential basis quarterly service quality performance reports on behalf of all of its New Hampshire subsidiaries (excluding Union) for a period of not less than one year following the Transition.

(B) TDS Telecom shall file on a non-confidential basis quarterly service quality performance reports on behalf of Union for a period of not less than one year following that date on which Union provides written notice to the Staff and the OCA of its ability to track and report service quality data (the "Union Service Quality Tracking Notification").

(C) The form and content of the above referenced service quality reports shall be the same or substantially similar to the report attached to the Stipulation as Exhibit B.

(D) On and after that date which is the later of (i) one year following the Transition or (ii) the issuance of the fourth quarterly service quality performance report on behalf of Union, (x) TDS Telecom may claim confidentiality pursuant to RSA 378:43 with respect to all of its subsidiaries' service quality reports filed thereafter and (y) the Staff, the OCA and TDS Telecom shall meet and shall discuss in good faith the need to continue with any New Hampshire service quality reporting obligations. The OCA's agreement that TDS Telecom may claim confidentiality pursuant to RSA 378:44 with respect to the quarterly service quality reports required by this agreement does not constitute an agreement of the OCA that these reports, or any other quality of service information with the Commission is confidential. The OCA expressly reserves the right to challenge any claim of confidentiality made by TDS Telecom or Union with respect to the confidentiality of the quarterly service quality reports or any other quality of service information of TDS Telecom or any of its subsidiaries filed with the Commission in the future.

8. TDS Telecom or Union shall not remove any of the six public payphones presently operating in Union's service territory for a period of one year following the Closing Date. Thereafter, Union and TDS Telecom agree to abide by all applicable administrative rules and statutes related to the removal of said payphones.

9. Confidential Exhibit A to the October 16, 2009, direct testimony of TDS Telecom witness Michael C. Reed presented a summary of the transition processes and timetables typically used by TDS Telecom to transition companies like Union into the TDS Telecom systems. With respect to the transition of Union, TDS Telecom will provide periodic written reports of significant or customer-affecting Transition events to the Staff and OCA in a form to be agreed upon after Commission approval of this Stipulation. TDS Telecom, Staff and OCA agree to discuss and negotiate the content (e.g., events to be reported), form and frequency of these reports on a good faith basis after Commission approval of this Stipulation.

10. TDS Telecom will provide copies of any customer notices filed with the Commission or Commission Staff to the OCA at the time of filing. Any notices which are filed confidentially to Commission Staff will be supplied to the OCA confidentially.

11. TDS Telecom shall cause Union after the Closing Date to provide Union's customers who pay bills via ACH transactions or auto-debit transactions with a 60 day grace period following that date upon which TDS Telecom transitions the customer billing function from Union's present billing systems to TDS Telecom's billing systems. During said grace period, Union shall not charge any late payment fees to Union's then customers who pay bills via ACH transactions or auto-debit transactions.

12. TDS Telecom agrees to cause Union to continue to operate and keep open for business Union's main business office in Farmington, New Hampshire for a minimum of 60 days following the conversion or transition from Union's present billing system to TDS Telecom's

billing system. During this period of time, Union's business office shall be open to the public during the hours of operation in effect as of the date of this Stipulation.

V. SETTLEMENT POSITIONS OF THE PARTIES

A. TDS Telecom and Union

TDS Telecom and Union assert that the proposed transfer by Utel of all of the outstanding stock of Union to TDS Telecom will not have an adverse effect on rates, terms, service or operation of either company and would be in the public interest. TDS Telecom and Union contend that the transaction satisfies any and all applicable legal requirements, and that the Stipulation and evidence submitted in support thereof meets any applicable burden of proof in this docket.

B. Staff

Staff's position is that the Stipulation is in the public interest and recommends that the Commission approve it.

C. Office of Consumer Advocate

The OCA supports the Stipulation and asks the Commission to approve it.

VI. COMMISSION ANALYSIS

"In general, the Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise as it is an opportunity for creative problem solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation." *Concord Electric Co.*, Order No. 24,072, 87 NH PUC 694, 708 (2002) (quotation omitted). Under N.H. Code Admin. Rules Puc 203.20(b) the Commission shall approve the disposition of a contested case by settlement if it determines that the result is just and reasonable and serves the public interest. *See also* RSA 541-A:31, V(a). In determining the

public interest the Commission serves as arbiter between the interests of customers and those of regulated utilities. *See* RSA 363:17-a; *see also* *Public Service Co. of N.H.*, Order No. 24,919 (Dec. 5, 2008) at 7-8. Moreover, the Commission scrutinizes settlement agreements thoroughly regardless of whether a party appears at hearing to raise objections. *Kearsarge Tel. Co., et al.*, Order No. 24,885 (Aug. 8, 2008) at 11.

In this case, all of the parties to the proceeding and Staff have entered into a Stipulation on all of the issues presented. Nevertheless, we must determine whether the approval of the Stipulation is just and reasonable and is in the public good. A threshold matter in dispute was the applicable statute that governs this transaction. The Stipulation proposes that the transaction be considered under RSA 369:8, II(b), RSA 374:30 or RSA 374:33, without concession by any party or Staff as to the applicability of the statutes to these or other transactions. In this case, therefore, we need not make a determination as to the governing statute or statutes and instead will evaluate the terms of the Stipulation under the standards of all three, which collectively require findings that the transaction will not have an adverse effect on the rates, terms and conditions of service of the utility pursuant to RSA 369:8, II(b), shall be for the public good pursuant to RSA 374:30 and shall be lawful, proper and in the public interest pursuant to RSA 374:33. After careful consideration of the evidence presented in this matter, for the following reasons we find that the Stipulation will not have an adverse impact on the rates, terms and conditions of service of the utility, is lawful and proper and its approval will serve the public good.

First, the parties agree, and the evidence demonstrates, that TDS Telecom has the requisite financial, managerial and technical capacity to operate the Union franchise. Regarding financial capacity, we note that this is a cash transaction with no associated financing. It is also

notable that TDS Telecom has a demonstrated history in New Hampshire of successfully acquiring other telephone companies, all of which are in continued operation. The Stock and Asset Purchase Agreement, as well as the Transition Services Agreement filed by TDS Telecom, further demonstrates a thorough evaluation of the practical concerns associated with operation of the Union franchise. Moreover, the pre-filed testimony of Michael Reed specifically described the anticipated future operation of Union under TDS Telecom management, reaffirmed representations made in TDS Telecom's initial notification filing, and addressed the additional matters raised in the Commission's Order No. 25,024.

With regard to rates, the Stipulation provides that Union may not request the commencement of a docket seeking to increase any of its basic retail rates and no other signatory may request the commencement of a docket seeking to decrease Union's basic retail rates until expiration of the fourteen-month period following the transition from Union's to TDS Telecom's operational support systems for regulated services. In the event the Company files an alternative regulation plan, TDS Telecom agreed that the plan would not permit a rate increase prior to expiration of the fourteen-month period after the transition.

The evidence presented persuades us that the transfer of ownership of Union to TDS Telecom will not have an adverse effect on rates, terms, service or operation of the public utility in Union's service territory. We make this finding based on the terms of the Stipulation that: (1) TDS Telecom agrees to adopt Union's retail and access tariffs in effect as of the date of closing; (2) no transactional merger expenses will be reflected in Union's retail rates; (3) certain DSL offerings will remain available to customers for one year; (4) non-confidential, quarterly service quality reports shall be filed for all of TDS Telecom's New Hampshire subsidiaries for adequate applicable time periods; (5) TDS Telecom will keep six public payphones presently operating in

Union's service territory for one year following closing; (6) TDS Telecom will provide reports to Staff and OCA on transition issues; (7) TDS Telecom will cause Union to provide customers with a 60-day grace period on certain late fees; (8) Union's main business office in Farmington, New Hampshire will continue to operate for 60 days after TDS Telecom converts Union customers to its billing system; (9) TDS Telecom may apply for federal stimulus funds to provide broadband services to un-served areas; and (10) TDS Telecom will continue to maintain a regulatory presence, such that it is able to reasonably respond to issues that may arise.

We are mindful of concerns associated with the operational issues related to the acquisition of a telecommunications carrier and the transition of the underlying operational support systems. In this regard, we note that TDS Telecom's acquisition of Union does not involve the design, installation and implementation of entirely new systems. We find the testimony of Michael Reed to be persuasive as to the similarities between this transition and past transitions TDS Telecom has successfully accomplished in New Hampshire without significant disruption.

Based upon testimony of TDS Telecom and Union relative to logistical issues regarding employee benefits, the timing of the closing of the transaction could result in employees incurring redundant deductibles:

If the closing does not occur prior to the end of 2009, then it's very likely that employees are going to have to be on two different – two different benefit plans for 2010. If employees are on Union's plan for a portion of 2010, and then TDS Telecom's plan for 2010, it's likely they could incur multiple deductibles. And, more importantly, it's very hard for them to understand two different benefit plans and how to plan for the future for their health costs. These are significant issues for employees. And, until a closing date is planned, employees are going to be in limbo, and they're not going to know, you know, how to plan for their health benefits in 2010. Testimony of Darren Winslow, Hearing Transcript of November 13, 2009 at 19 lines 10-22.

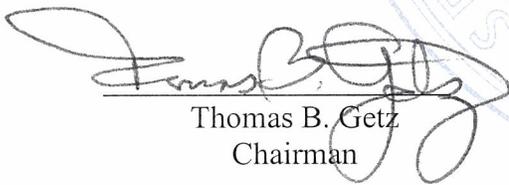
It is our expectation that any adverse impact to employees will be minimized by our expeditious approval of this transaction. Accordingly, we find that the proposed transactions between Union and TDS Telecom are for the public good and are lawful, proper and in the public interest and approve the proposed transactions consistent with the terms of the Stipulation.

Based upon the foregoing, it is hereby

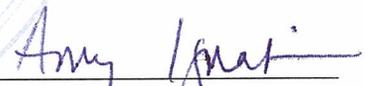
ORDERED, the Stipulation between TDS Telecom, Union, the OCA and Staff of the Commission is approved, and it is

FURTHER ORDERED, that Utel may transfer to TDS Telecom all of the issued and outstanding shares of capital stock of Union, and Freedom Ring and Unex, may transfer to TDS Telecom certain assets consisting primarily of the assets associated with, and the business of, providing customers in the Union service area with interstate and international toll service and internet service.

By order of the Public Utilities Commission of New Hampshire this twentieth day of November, 2009.


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Chairman


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Attested by:


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11/20/09 Order No. 25,045 issued and forwarded to all parties. Copies given to PUC Staff.

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