DT 99-108

PRIMUS TELECOMMUNICATIONS, INC.

Petition to Acquire Assets of Telegroup, Inc.

Order Approving Acquisition With Conditions

O R D E R   N O. 23,324

October 25, 1999

On June 28, 1999, Primus Communications, Inc. (Primus) and Telegroup, Inc. (Telegroup) jointly filed an Application to Permit the Sale and Transfer of Assets, seeking to transfer to Primus all the assets of Telegroup, including customer base. The Application states that the acquisition is part of an ongoing reorganization of Telegroup under the supervision of the U.S. Bankruptcy Court for the District of New Jersey. By letter dated July 14, 1999, the parties amended their application to seek approval *nunc pro tunc* because an expedited closing occurred on June 30, 1999, as a result of the terms and conditions imposed by the Bankruptcy Court. Both Primus and Telegroup are registered competitive toll providers in New Hampshire.

The parties state that the transfer will not affect the quality or cost of customers' services. Primus will adopt the terms and conditions of the existing Telegroup tariff. In addition, customers were, at the time of the application, being notified of the transaction and the change in carrier. Upon completion of the acquisition, Telegroup will no longer provide telecommunications services in New Hampshire. Primus will therefore request that it's certificate of authorization be expanded to permit provision of interexchange services currently provided by Telegroup and the transfer of assets will be essentially transparent.

We find that Primus' acquisition of the assets of Telegroup is in the common good and public interest, a finding necessary for approval of the transfer of a public utility's franchise, works, or system. RSA 374:30. The system to be transferred consists of all assets including customer base. 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. (Re 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 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 the carriers for recognizing part of this imperative. We will approve the acquisition *nunc pro tunc,* with a condition that Primus notify customers in conformance with our discussion above. In particular, in order to comply with RSA 374:28-a Primus must provide customers with a cost-free opportunity to choose another carrier, not merely announce the change.

Based upon the foregoing, it is hereby

ORDERED, that the transfer of Telegroup, Inc. to Primus Telecommunications, Inc. is hereby APPROVED ***nunc pro tunc,*** with the condition that Primus provide customer notification consistent with our discussion above, granting customers no less than 14 days to request a cost-free change of service provider.

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