

DT 00-008

VITTS NETWORKS, INC.

Acquisition of Equity Position by Other Public Utility

Supplemental Order Approving Acquisition

O R D E R N O. 23,417

March 10, 2000

By Order 23,390, issued January 19, 2000, Vitts Networks, Inc. (Vitts), obtained approval of a transfer of its stock to a newly created holding company, Vitts Networks Group, Inc. (Vitts Group). Vitts now seeks supplemental approval of a financing transaction under RSA 374:33, which prohibits a direct or indirect transfer of more than 10% ownership of a New Hampshire public utility to another public utility, or public utility holding company as defined in §2(a)(7)(A) of the Public Utility Holding Company Act of 1935, without a Commission finding that the transfer is lawful, proper, and in the public interest.

Vitts is a duly authorized New Hampshire Competitive Local Exchange Provider. As authorized in Order No. 23,390, all holders of equity interests in Vitts will soon exchange their interests for corresponding equity interests in the Vitts Group. Concurrent with that exchange of equity interest, Vitts proposes to complete a substantial financing, including a component of equity. The financing will provide

capital for building out Vitts' telecommunications network throughout the Bell Atlantic service area in New England and the mid-Atlantic states.

On March 8, 2000, Vitts informed the Commission that one of the parties making a new equity investment in Vitts Group will be Exelon Capital Partners, Inc. (Exelon), an investment entity which is a wholly owned subsidiary of PECO Energy Company (PECO). PECO, an electric and gas utility operating within Pennsylvania, is a public utility holding company as defined in Section 2(a)(7)(A) of the Public Utility Holding Company Act of 1935.

Exelon will obtain an equity position in Vitts comprising approximately 17% of Vitts' equity. PECO will indirectly obtain a similar equity position in Vitts. Accordingly, RSA 374:33 applies. RSA 374:33 states in pertinent part:

No public utility or public utility holding company as defined in section 2(s)(7)(A) of the Public Utility Holding Company Act of 1935 shall directly or indirectly acquire more than 10 percent, or more than the ownership level which triggers reporting requirements under 15 U.S.C., section 78-P, whichever is less, of the stocks or bonds of any other public utility or public utility holding company incorporated in or doing business in this state, unless the commission finds that such acquisition is lawful, proper and in the public interest.

Vitts avers that the proposed acquisition is in the public interest. Vitts will continue to operate with the same

financial, managerial and technical expertise utilized prior to the financing, and that New Hampshire consumers will retain the benefit of Vitts' competitive presence in the marketplace.

We find that the proposed financial transaction is lawful, proper and in the public interest of New Hampshire. A facilities build-out by a competitive provider will increase the choices available to New Hampshire consumers. We may see these kinds of overlapping investments occur more often than in the past and we will examine them on a case by case basis to ensure that they do not pose risks to consumers resulting from cross-subsidization or anti-competitive behavior. We have considered the possibility of cross-subsidization by captive New Hampshire ratepayers, as well as other public interest issues that could arise, and see no such problems here.

Based upon the foregoing, it is hereby

ORDERED, that the financing proposed, by which Exelon will acquire an equity interest of more than 10% in VITTS NETWORKS, INC., is hereby APPROVED.

By order of the Public Utilities Commission of New
Hampshire this tenth day of March, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary