

DT 00-022

US WATTS AND CAPSULE COMMUNICATIONS, INC.

Petition for Approval of a Pro Forma Reincorporation

Order Approving Transfer of Control

O R D E R N O. 23,447

April 27, 2000

On January 18, 2000, US WATS, Inc. (US WATS) and Capsule Communications, Inc. (Capsule) (collectively, the Petitioners) jointly filed with the New Hampshire Public Utilities Commission requesting approval of a *pro forma* reincorporation, pursuant to RSA 374.30. In the transaction US WATS will change its state of incorporation from New York to Delaware; and Capsule will assume US WATS' certificates of authority and operations.

The Commission authorized US WATS as a Competitive IntraLATA Toll Provider in New Hampshire on March 25, 1997, in Order No. 22,473. The Commission found that the company demonstrated the financial, managerial and technical ability to provide intrastate telecommunications services in New Hampshire.

Capsule is a newly formed wholly owned subsidiary of US WATS and is incorporated in the State of Delaware. Capsule received its authority to provide IntraLATA Toll services in New Hampshire on April 14, 2000 by Authorization No. 0400300.

The proposed incorporation is *pro forma* in essence as US WATS and Capsule are currently affiliated through their parent-subsidary relationship. The Petitioners assert that Delaware has emerged as a leading state that provides a corporate legal environment that is responsive to the business needs of corporations. Therefore, it is for this reason that US WATS asserts that "it would be in the best interests of the Company and its shareholders to change...state of incorporation from New York to Delaware." The transaction requires US WATS to merge with Capsule. The company will continue as Capsule Communication, Inc. The parties represent that the customers will not be affected by the transfer, as the transaction will not adversely affect the rates, terms, service or operation of US WATS within the State of New Hampshire. The Petitioners purport that "the change in corporate name will be the only perceptible change to US WATS Customers" as Capsule will adopt US WATS tariff.

Pursuant to RSA 374:30, we find the proposed transfer of the franchise, works and system will be for the public good. We point out, however, RSA 374:28-a prohibits slamming, i.e. changes of a customer's service provider without the customer's knowledge or consent. Because the entity providing service will remain the same except for name,

there is no issue of slamming here. As we stated in *Re Maxxis Communication, Inc.*, DT 99-110, Order No. 23,323 (October 25, 1999), we 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 another long distance carrier, without additional charge, for a period of at least 14 days after the date of the notice.

Based upon the foregoing, it is hereby

ORDERED, that the proposed transfer of US WATS, Inc. to Capsule Communications, Inc. is hereby APPROVED with the condition that customer notification proceed as directed above.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of April, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary