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USN COMMUNICATIONS, INC. AND CORECOMM NEW HAMPSHIRE, INC.

**Petition to Acquire Assets of USN Communications, Inc. and
Petition for Forbearance of Commission's Public Utility
Assessment**

Order Approving Acquisition

O R D E R N O. 23,522

July 5, 2000

I. PROCEDURAL HISTORY AND BACKGROUND

On March 15, 1999, CoreComm New Hampshire, Inc.(CoreComm NH) filed a "Letter of Notification" (LON) informing the New Hampshire Public Utilities Commission (Commission) of its intention to acquire certain assets of USN Communications, Inc. (USNC) subsidiaries, including USN Communications Northeast, Inc. (Northeast) and USN Communications Long Distance, Inc.(USNCLD)(collectively the Petitioners). According to the LON the Petitioners had entered into Asset Purchase Agreement (Agreement) dated February 19, 1999, whereas CoreComm Limited, CoreComm NH's ultimate parent, would purchase substantially all of USNC assets including customer accounts.

CoreComm NH is authorized to provide both intraLATA Toll Services and intrastate local exchange telecommunications in New Hampshire, pursuant to IXC Authorization No. 34,299 and by Order No. 23,213, dated May 11, 1999. Northeast is

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authorized to provide switched and non-switched intrastate local exchange telecommunications in New Hampshire pursuant to Order No. ,819, dated January 5, 1998. USNCLD is a competitive IntraLATA Toll Provider in New Hampshire pursuant to Authorization No. 14097, dated March 5, 1997.

In the LON CoreComm stated that it was their understanding that prior approval was not required by the Commission in order to consummate the proposed transaction. CoreComm further averred that "absent the receipt of written notification to the contrary, the Parties will proceed on the understanding that no approval or other formal action with respect to the proposed acquisition is required by the Commission." CoreComm requested that if Commission approval was necessary they requested that the LON be considered as an application. Commission records are devoid of reference that any action was taken to respond to CoreComm LON.

On July 23, 1999, USNC filed a 2nd LON to apprise the Commission that consummation of the Asset Purchase Agreement had transpired on May 26, 1999. USNC conveyed that all customers were notified in advance of the transition of service to CoreComm NH by direct mail on March 5, 1999 and May 27, 1999. USNCLD and Northeast in the 2nd LON requested that

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the Commission withdraw each carrier's respective certificate of authority to provide telecommunication in the New Hampshire and to cancelled USNCLD's tariff and Northeast's rate schedule.

USNC filed a 3rd LON with Commission on April 10, 2000 (dated March 23, 2000) and docketed DT 00-096 to reiterate that it had discontinued provision of telecommunications in New Hampshire when CoreComm purchased the customer base and assets of USNCLD and Northeast. USN stated that it had previously advised the Commission by letter on January 10, 2000 that it had ceased providing services in New Hampshire on May 26, 1999 and therefore requested forbearance of the Public Utility Assessment for the Fiscal Year Ending June 30, 2000.

On March 21, 2000 Northeast received a Public Utility Assessment Invoice for the full fiscal year. In the 3rd LON Northeast requests forbearance from the Commission of the Public utility Assessment, RSA 362:4. Northeast and USNCLD jointly request forbearance of the Commission requirement to file an annual report. Northeast makes this request as it is also asking for a discontinuance of its authority to provide service.

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I. THE FILING

The LON represents that CoreComm and USNC entered into an Agreement under which CoreComm would acquire substantially all of USNC's assets, except for the assets of USN Wireless, Inc. The Parties delineated that concurrently with the execution of the Agreement, USNC had initiated Chapter 11 bankruptcy proceedings in the U.S. Bankruptcy Court for the District of Delaware. CoreComm and USNC aver that significant economic benefits could be realized through CoreComm's acquisition of USNC's as a going concern, thereby maximizing creditor recoveries and preserving uninterrupted service for USNC's customers. CoreComm states that the transfer will result in no change in customers' rates, terms, or conditions of service. As part of DT 99-031 CoreComm NH provided the required information to support that it had the necessary legal, technical, managerial and financial qualifications for certification as a Competitive Local Exchange Provider in the state.

In the 2nd LON USN provided copies of their customer notifications. Staff observed that both notices provided a customer service 800 telephone number and informed the customer of the pending transaction and its impact on them.

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However, neither notification apprised the customers of their opportunity to choose, without additional charge, another long distance carrier, for a period of at least 14 days after the date of the notice.

II. COMMISSION ANALYSIS

Pursuant to RSA 374:30 a transfer of a utility's "franchise, works or system" must be approved the Commission when the Commission finds it is for the public good. CoreComm NH asserts that the proposed transaction will ensure continued provision of reliable, uninterrupted telecommunication services for residential and business customers in New Hampshire that were formerly served by Northeast and USNCL. The Petitioners represent that the transaction will be transparent to Northeast and USNCLD customers with exception of a change in name and will not adversely affect the provision of telecommunications in New Hampshire.

The Commission, pursuant to its authority under RSA 374:30, finds that CoreComm NH's acquisition of the assets of Northeast and USNCLD is in the public interest. The system to be transferred consists of all assets including customer base. In RSL Com USA, Order No. 23,234 (June 14, 1999) DT 99-077, the Commission determined that the provisions of RSA 374:28-a,

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which prohibits changes of a customer's service provider without the customer's knowledge or consent, applies when there is a transfer of a customer base from one provider to another. Therefore, we will approve the transfer of a customer base only when 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.

We understand that the customers were notified and we commend the carriers for recognizing part of this imperative. However, the customers were not told of their opportunity to choose without additional charge. We will approve the acquisition, subject to the condition that Northeast and USNCLD notify customers of their cost free opportunity to choose in conformance with our discussion above. In particular, in order to comply with RSA 374:28-a USN must provide customers with a 14-day cost-free opportunity to choose another carrier, not merely announce the change.

We will also grant rescission of the Northeast and USNCLD certificates of authority to provide telecommunication in New Hampshire. In the matter of the Public Utility

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Assessment applied for Fiscal Year Ending June 30, 2000, we will grant USNCLD and Northeast's requests for such forbearance. USN in its filing aver that both Northeast and USNCLD ceased to provide service on May 26, 1999 and had not acquired any customers in the New Hampshire since that date, therefore USNCLD and Northeast should not be subject to an additional assessment for the subsequent fiscal year.

Based upon the foregoing, it is hereby

ORDERED, that the acquisition of USN Communications Northeast, Inc. and USN Communications Long Distance, Inc. by CoreComm NH is hereby APPROVED with the condition that Northeast and USNCLD provide customer notification consistent with our discussion above, granting customers no less than 14 days to request a cost-free change of service provider; and it is

FURTHER ORDERED, that USN Communications Northeast, Inc. and USN Communications Long Distance, Inc. Certificate of Authority for the provisioning telecommunication services in New Hampshire is hereby RESCINDED; and it is

FURTHER ORDERED, that forbearance of the New Hampshire Public Utility Assessment for Fiscal Year Ending June 30, 2000 assessed on USN Communications Northeast, Inc.

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is GRANTED.

By order of the Public Utilities Commission of New
Hampshire this fifth day of July, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary