

DT 00-221

THE FURST GROUP, INC. AND ZONE TELECOM, INC.

**Application for Asset Transfer from The Furst Group, Inc.
to Zone Telecom, Inc.**

Order Approving Transfer of Assets

O R D E R N O. 23,639

February 20, 2001

On October 2, 2000, Zone Telecom, Inc. (Zone) and The Furst Group, Inc. (TFG) (collectively, the Petitioners) filed with the New Hampshire Public Utilities Commission (Commission) a joint application requesting approval of assignment of selected assets from TFG to Zone, including TFG's customer base.

Zone, an indirect wholly-owned subsidiary of e-Kong Group Limited (e-Kong Group), is authorized in New Hampshire to provide intrastate interexchange telecommunications services pursuant to Authorization No. IXC 10-001-00, dated October 2, 2000. The Commission authorized TFG as a Competitive IntraLATA Toll Provider in New Hampshire on July 1, 1996, pursuant to Authorization No. IXC 11097.

On August 4, 2000, Zone and TFG entered into an Asset Purchase Agreement wherein Zone will purchase the assets, including the customer base, of TFG, a provider of

resold international, interstate, and intrastate interexchange services in the United States.

As part of the transfer, Zone filed a Petition for Waiver of the Subscriber Change Provisions on August 7, 2000, (Docket No. 94-129) with the Federal Communications Commission (FCC). In its petition, Zone stated, "TFG is, from a financial perspective, *in extremis*.... at risk to default on its senior credit facility, lose its key managerial employees, and suspend services to its customers." Waiver Petition at p. 3. Therefore, to prevent the company's dissolution, Zone agreed to purchase TFG's assets and assume certain preexisting liabilities in exchange for cash and shares of stock in e-Kong Group.

The Waiver Petition requested a limited waiver of the FCC's authorization and verification rules (47 CFR §§64.1150) to enable Zone to transfer subscribers of TFG and customer services without first obtaining subscribers' authorization and verification. The FCC, in its Order, granted Zone's request, noting that Zone had demonstrated special circumstances that warranted a deviation from the general rule. The FCC determined that, without the waiver, TFG customers were at risk of losing their long distance

service or of being charged substantially higher rates than those they received from TFG.

The FCC conditioned its Order on Zone's agreement that it would implement a multiple-step customer notification plan to advise TFG customers that Zone would assume servicing them, would establish a toll-free number to address customer questions, and would work with the FCC and customers of TFG to resolve outstanding complaints regarding services provided by TFG. The FCC concluded that the rights of TFG's customers would be adequately protected, and the waiver was therefore in the public interest.

The Petitioners state in their application before this Commission that, pursuant to New Hampshire RSA 374:28-a and NH Puc Chapter 411.04(b), TFG and Zone will provide TFG customers with at least 14 days written notification that: (1) a carrier change is taking place; (2) the carrier change will not result in any charges to the customer; (3) the customer has the right to change the customers's presubscribed long distance carrier if desired; and providing (4) notice of the date of the change; and, (5) a toll-free number for questions.

The Petitioners aver that the transfer of TFG's customer base to Zone will not affect the quality or cost of customers' long distance services, that Zone will adopt TFG's

tariffs, and that Zone will offer transitional employment to certain of TFG's operational employees to maintain continuity of service to TFG's customers.

We find pursuant to RSA 374:30 that Zone's acquisition of the assets of TFG will be for the public good. The system to be transferred consists of TFG's tangible and intangible assets encompassing, *inter alia*, customer base, computerized billing systems, and collection rights.

We approve the Petitioners' request, with the imposition of the same conditions for adequate customer protection outlined in the FCC Order in Docket No. 94-129, the multi-step notification procedure outlined in Petitioners' Application. We believe that these protections meet the requirements that have been established by New Hampshire law and our prior decisions regarding customer base transfers.

Based upon the foregoing, it is hereby

ORDERED, that the transfer of The Furst Group, Inc.'s assets to Zone Telecom, Inc. is hereby APPROVED; and it is

FURTHER ORDERED, that The Furst Group, Inc.'s New Hampshire Competitive IntraLATA Telecommunications certificate of authority is RESCINDED.

By order of the Public Utilities Commission of New
Hampshire this twentieth day of February, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary