

DT 01-049

NXLD COMPANY

Transfer of Customer Base of NXLD Company to ComTech21, LLC

O R D E R N O. 23,730

June 21, 2001

I. INTRODUCTION AND BACKGROUND OF NOTIFICATION

On March 14, 2001, NXLD Company (NXLD) filed with the Commission notification that it intends to cease doing business in New Hampshire and plans to transfer its long distance customers to ComTech21, Inc. (ComTech21), a Delaware limited liability corporation. NXLD, a Delaware corporation, is currently certified as a toll provider in New Hampshire under IXC # 27998. ComTech21 is also a certified toll provider in the state of New Hampshire operating under IXC # 09-006-00. The two companies are not related, although NXLD purchases interexchange services from ComTech21 at wholesale prices and resells the same to its customers at retail.

The notification indicates that ComTech21 intends to migrate approximately eighty-three (83) New Hampshire customers from NXLD to ComTech21 because NXLD will no longer be providing service. The notification also indicates that ComTech21 will provide interexchange service to these customers under the same or better rates as provided by NXLD.

The notification further states that prior to the transfer, ComTech21 will provide notice to NXLD's customers via letter informing them that the quality of service will remain the same with the same or better services and rates; that they have a right to switch to the interexchange carrier of their choice; and that ComTech21 will reimburse customers for any Primary Interexchange Carrier ("PIC") change charges if imposed by local exchange carriers. Also, ComTech21 will contact customers by letter following the change which reiterates the points outlined above. Accordingly, ComTech21 and NXLD over the transaction will be completely transparent to customers.

The notification further posits that telecommunications customers and the general public will realize significant benefits from the transfer given ComTech21's managerial, technical, and financial ability.

II. STAFF'S RECOMMENDATION

Commission Staff (Staff) notes that a transaction of this nature is contingent upon the conditions established in New Hampshire Administrative Rule Puc 411.04, *Transfer or Lease of a CTP or Right to Service a Customer*. The rule specifically includes requirements to ensure against unauthorized change in carrier or "slamming". Staff notes

that the rule also requires that the transferor must provide a minimum of 14 days written notice to the customer reporting that the CTP will no longer be providing services and the date when service will be terminated and that a copy be forwarded to the Commission at the time it is mailed; that the customer shall select an alternate carrier or the customer will be assigned to the transferee; that the change will be at no cost to the customer.

The Staff contends that because ComTech21 is notifying the customers of the change, it might well appear to customers that they were, in fact, having their carrier changed without their consent. Staff asserts that to be consistent with RSA 374:28-a, NXLD is the proper party to inform its customers of the changes taking place in their toll service. Staff contends the plans to notify the 83 customers laid out in the notification are otherwise adequate to meet the intent of the statute and rule that the first notification is made by NXLD. The second notification "welcoming customers" may appropriately be transmitted by ComTech21.

Staff notes another condition of the transfer requires that within 30 days of the change, the company ceasing operations shall refund to its customers any

applicable amounts owed.

Staff concludes that the transaction does have elements which fulfill the public good test by ensuring that customers maintain service without interruption and by enhancing the responsiveness of the free market. Changes of this general nature are necessary to maintain the strength of competitors in a vibrant market.

III. COMMISSION ANALYSIS

We agree with the concerns expressed by Staff regarding potential violation of the "anti-slamming" statute, RSA 374:28-a. We believe that the course of action described above by Staff, however, will satisfy that concern. Therefore, we will approve the transfer of NXLD's right to service customers to ComTech21 on the condition that NXLD notify its customers in writing 14 days prior to the change in accordance with the conditions detailed in the notification and that NXLD provide refunds to its customers. Further, under the authority granted us by RSA 374:28, we will withdraw NXLD's certification to provide telecommunications services within the state of New Hampshire.

Based upon the foregoing, it is hereby

ORDERED, that the proposed transfer of NXLD's right to service customers to ComTech21 is GRANTED, subject to

NXLD's compliance with N.H. Admin. Rule Puc 411.04(b) as discussed above; and it is

FURTHER ORDERED, that the Certificate of Public Convenience issued to NXLD as IXC # 27998 be withdrawn.

By order of the Public Utilities Commission of New
Hampshire this twenty-first day of June, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary