

DT 00-049

DIGITAL BROADBAND COMMUNICATIONS, INC. AND  
DIGITAL SIGNAL COMMUNICATIONS, INC.

Request of Digital Broadband Communications, Inc. and Digital  
Signal Communications, Inc. for Authority to Merge

Order Approving the Plan of Merger

O R D E R    N O.    23,512

June 19, 2000

On February 23, 2000, Digital Broadband Communications, Inc. (Digital Broadband) filed a "Letter of Notification" (LON) informing the New Hampshire Public Utilities Commission (Commission) of the merger of Digital Broadband and Digital Signal Communications, Inc. (DSCI). Digital Broadband is seeking approval of the merger *nunc pro tunc* because it claims that it was not aware Commission approval was required for the transaction.

Both Digital Broadband and DSCI are authorized to provide switched and non-switched local exchange telecommunication service in New Hampshire. The Commission authorized Digital Broadband as a Competitive Local Exchange Provider in New Hampshire on March 30, 2000, in Order No. 23,430. The Commission found that the company demonstrated the financial, managerial and technical ability to offer intrastate local exchange telecommunication services in the service area of Bell Atlantic. DSCI was authorized to provide

switched and non-switched local exchange telecommunication service in the service territory of Bell Atlantic pursuant to Commission Order No. 22,825, issued January 6, 1998.

The LON states that "Pursuant to the Parties' merger agreement, DSCI merged with and into Digital Broadband, with Digital Broadband surviving the merger. As a result of the merger, the separate existence of DSCI ceased, and the Articles of Incorporation and Bylaws of DSCI were replaced by those of Digital Broadband." The merger was completed on September 30, 1999.

Digital Broadband avows the transfer will not affect the quality or cost of customers' services as the company did not change the rates or terms and conditions that DSCI offered to consumers. In the LON Digital Broadband avers that following the merger, written notice was mailed to all DSCI customers explaining the DSCI's merger with Digital Broadband.

Digital Broadband asserts that the merger will enable the company to improve its financial condition; enhance its operational flexibility and efficiency; and strengthen its long term financial viability. Digital Broadband represents that the transaction has been transparent to New Hampshire customers.

Staff asserts that Digital Broadband has not filed

with the Commission tariff pages that embody the services provided by DSCI to their customers in New Hampshire.

We find that merger of DSCI and Digital Broadband will be for the public good, a finding necessary for approval of the transfer of a public utility's franchise, works, or system. RSA 374:30. The system to be transferred consists of all assets including customer base.

We addressed the issue of customer base transfer in Order No. 23,234 (June 14, 1999) in DT 99-077, Re RSL COM U.S.A., Inc. In that order we noted that we cannot approve the transfer of a 'customer base,' given the statutory mandate of RSA 374:28-a. RSA 374:28-a prohibits changes of a customer's service provider without the customer's knowledge or consent, a practice known as slamming. In Re RSL, where the acquiring company had started to give the customers service, we found that such a transfer without advance notice and opportunity to select a different carrier violated the anti-slamming statute.

We further stated in RSL, "[I]t is imperative that customers have adequate advance notice that a carrier proposes to stop serving them, of their ability to choose another carrier, and of the identity of the carrier that will serve them if they do not make a choice by the end of the notice

period." Id. p. 3.

We commend the carriers here for recognizing part of this imperative. However, the customers were only notified of the merger after the fact. As such, we will approve the acquisition *nunc pro tunc*, with a condition that Digital Broadband notify customers in conformance with our discussion above. In particular, in order to comply with RSA 374:28-a Digital Broadband must provide customers with a cost-free opportunity to choose another carrier, not merely announce the change.

**Based upon the foregoing, it is hereby**

**ORDERED,** that the merger of Digital Signal Communications, Inc. with and into Digital Broadband Communications Inc. is hereby APPROVED *nunc pro tunc*, with the condition that Digital Broadband provide customer notification consistent with our discussion above, and in a manner meeting the approval of the Consumer Affairs Department of the Commission, granting customers no less than 14 days to request a cost-free change of service provider; and it is

**FURTHER ORDERED,** Digital Broadband shall file tariff pages encompassing the services provided by DSCI, pursuant to which it will provide service to those former customers of DSCI who choose the default carrier Digital Broadband as their

local exchange service provider; and it is

**FURTHER ORDERED,** DSCI surrender its certification in New Hampshire by filing a supplement canceling their existing tariff; and it is

**FURTHER ORDERED,** that the Petitioner shall file a compliance tariff with the Commission on or before July 19, 2000, in accordance with N.H. Admin. Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this nineteenth day of June, 2000.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Claire D. DiCicco  
Assistant Secretary