

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 19-143

BRETTON WOODS TELEPHONE COMPANY, INC.

Petition for Approval of Transfer of Franchise, Works, and Systems to Affiliate

Order *Nisi* Approving Transfer of Indirect Ownership

ORDER NO. 26,314

December 12, 2019

This order approves the transfer of indirect ownership of Bretton Woods Telephone Company from LICT Corporation to its affiliate CIBL, Inc. This order is being issued on a *nisi* basis to ensure that customers and other interested persons receive notice of the decision and have the opportunity to comment or request a hearing.

I. PROCEDURAL HISTORY

On August 27, 2019, Bretton Woods Telephone Company, Inc. (BWTC or the Company) petitioned the Commission to issue an order authorizing the transfer of BWTC's ownership interests from Lynch Telephone Corporation IV, a wholly-owned subsidiary of LICT Corporation (LICT), to NH Granite Communications, Inc. (NHGC), a wholly-owned subsidiary of CIBL, Inc. (CIBL), pursuant to RSA 374:30, II. BWTC submitted the pre-filed testimony of Robert E. Dolan, the interim Chief Executive Officer (CEO) and interim Chief Financial Officer (CFO) of CIBL, as well as the corporate organization chart for LICT and the proposed corporate organization chart for CIBL.

On October 2, 2019, BWTC submitted supplemental pre-filed testimony of Mr. Dolan, clarifying the affiliate relationship between LICT and CIBL. On November 8, BWTC submitted a copy of a "Section 214" approval from the Federal Communications Commission authorizing

the transfer of control of BWTC to CIBL. On November 26, Commission Staff (Staff) filed a memorandum recommending approval of BWTC's petition. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available at <http://puc.nh.gov/Regulatory/Docketbk/2019/19-143.html>.

II. POSITIONS

A. BWTC

BWTC requested authorization from the Commission to transfer 100 percent of BWTC's common stock from LICT to CIBL in exchange for 1,000 shares of CIBL common stock.

Petition at 1. The proposed transfer would result in CIBL owning BWTC, and LICT owning approximately 6 percent of CIBL's common stock. *Id.* at 5.

BWTC is an incumbent local exchange carrier (ILEC) that is regulated as an excepted local exchange carrier (ELEC).¹ *Id.* at 3. BWTC provides local exchange service and wholesale telecommunications services to residential and business customers in and around Bretton Woods, New Hampshire. *Id.* BWTC has been a wholly-owned, indirect subsidiary of LICT since 1992. *Id.* at 4. According to BWTC, CIBL was spun off from LICT in 2007. *Id.* The Company stated that NHGC is a newly-created, wholly-owned subsidiary of CIBL that will be the holding company for 100 percent of BWTC's common stock upon the completion of the proposed transfer. *Id.*

Mr. Dolan stated that he maintained primary responsibility for oversight of BWTC for 26 years on behalf of LICT, and has served as LICT's CEO or CFO from 2007 to 2019. Dolan Supplemental Direct Testimony at 2. Mr. Dolan further stated that he serves as CIBL's interim CEO and interim CFO, and will continue to oversee BWTC after the completion of the proposed

¹ On December 14, 2012, BWTC elected to be an ELEC pursuant to RSA 362:7, I (c)(2).

transaction. He also stated that CIBL receives and will continue to receive administrative and management support from LICT, and that all three members of CIBL's board of directors are members of LICT's seven-member board of directors. *Id.* at 2-3.

In support of its petition, BWTC stated that the proposed transaction would not produce any change in the Company's operations, systems, rates, or terms and conditions of any service. Petition at 5. BWTC represented that the proposed transaction would not involve any changes to facilities or Company management and operations personnel. *Id.* BWTC stated that the proposed transaction would be "seamless and invisible" to the Company's customers and suppliers. *Id.* BWTC also asserted that the purpose of the proposed transaction is to provide the Company with the benefit and exclusive focus of CIBL, a "skilled" rural telecommunications holding company, rather than being the "smallest" and "most separated" of LICT's telephone companies. *Id.*

BWTC maintained that the standard of review for the proposed transaction is established by RSA 374:30, II, which requires the Commission to "determine whether the acquiring company is technically, managerially, and financially capable of maintaining the operations of an ILEC." *Id.* at 2 (internal quotation marks and brackets omitted). BWTC cited *Joint Petition of FairPoint Communications and Consolidated Communications*, Order No. 26,022 (May 31, 2017) (*Joint Petition of FairPoint and Consolidated*) as establishing the Commission's practice for evaluating the statutory criteria for similar ownership transfers. *Id.* According to BWTC, in *Joint Petition of FairPoint and Consolidated*, the Commission also held that, in transactions between holding companies that involve no change in entity, operations, facilities, management, personnel, or services of an ILEC which is an ELEC, the acquiring holding company need not be

separately authorized to conduct operations or to provide service in the State of New Hampshire. *Id.* at 3.

BWTC maintained that, in *Northland Telephone Company of Maine*, Order No. 26,202 (December 18, 2018) (*Northland*), the Commission found that the RSA 374:30, II criteria also apply to internal reorganizations involving the consolidation of affiliated ILECs where the affiliate with a franchise area in New Hampshire is an ELEC. *Id.*

According to BWTC, CIBL and its subsidiary NHGC are technically, managerially, and financially capable of maintaining the Company's ILEC obligations. *Id.* at 6.

B. Staff

In its memorandum, Staff recommended that the Commission grant the petition, based on a finding that BWTC and CIBL have the requisite technical, managerial, and financial capabilities required under New Hampshire law. Staff Recommendation at 2-3. Staff stated that it had investigated the common ownership and control between LICT and CIBL, and had determined that the three individuals who are on both companies' boards of directors beneficially own 43.3 percent and 44.7 percent, respectively, of the outstanding shares in the companies, and that no other stockholder is known to have greater than five percent beneficial ownership of either company's outstanding shares. *Id.* at 2. Based on its review, Staff concluded that LICT and CIBL are effectively components of the same enterprise. *Id.*

Staff noted the Commission's previous finding in *Bretton Woods Telephone Company and Northern New England Telephone Operations*, Order No. 25,452 (January 8, 2013) (*Bretton Woods*) that "BWTC has the technical, managerial and financial capability to maintain the obligations of an incumbent local exchange carrier." Staff maintained that prior determination should be sufficient for the Commission to find now that BWTC and CIBL have the requisite

technical, managerial, and financial capability to maintain the operations of BWTC as an ILEC, as required under RSA 374:30, II. *Id.* at 2-3.

III. COMMISSION ANALYSIS

The relevant statutory criteria for approval of the proposed ownership transfer is set forth in RSA 374:30, II. The Commission must approve such a transfer if it finds the utility will maintain the technical, managerial, and financial capability to perform the obligations of an ILEC set forth in RSA 362:8 and RSA 374:22-p. *See* RSA 374:30, II. The applicable standard focuses not on general end user services, but on basic service and wholesale services provided by the ILEC, and the technical, managerial, and financial capability to continue to provide those services following the transfer. *See Joint Petition of FairPoint and Consolidated* at 36.

The Commission has previously applied RSA 347:30, II to an upstream corporate merger and acquisition transaction and to a consolidation of affiliated ILECs, including a New Hampshire ILEC. *See Joint Petition of FairPoint and Consolidated* at 2, 32 (transfer of ownership and effective control of an ILEC's franchise, works, or system indirectly through merger or stock transfer at parent company level); *Northland* at 1, 4 (internal corporate restructuring transaction involving consolidation of a number of Consolidated's indirect, wholly-owned ILEC subsidiaries). We find that the standard set forth in RSA 374:30, II has been met with respect to the proposed transfer of ownership of BWTC.

Mr. Dolan's testimony and Staff's independent investigation regarding LICT's and CIBL's substantially overlapping ownership and management demonstrate that CIBL's proposed ownership of BWTC through NHGC will maintain the requisite level of technical, managerial, and financial capabilities necessary to meet the Company's obligations as an ILEC in its franchise area. We also note the Commission's earlier finding that BWTC effectively meets that

standard. *See Bretton Woods* at 2. We therefore find that the Company has made a sufficient showing that the proposed ownership transfer between affiliates meets the statutory criteria for approval under RSA 374:30, II.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that, subject to the effective date below, the petition of Bretton Woods Telephone Company, Inc. for approval of the transfer of its ownership, as described in the body of this order, is hereby GRANTED; and it is

FURTHER ORDERED, that Bretton Woods Telephone Company, Inc. shall cause a summary of this order, issued concurrently with this order, to be published once in a newspaper of general circulation within its franchise area, such publication to occur no later than December 16, 2019, and to be documented by affidavit filed with the Commission on or before December 27, 2019; and it is

FURTHER ORDERED, that all persons interested in responding to this order *nisi* be notified that they may submit their comments or file a written request for a hearing that states the reason and basis for a hearing no later than December 26, 2019 for the Commission's consideration; and it is

FURTHER ORDERED, that all persons interested in responding to such comments or request for hearing shall do so no later than December 30, 2019; and it is

FURTHER ORDERED, that this order *nisi* shall be effective on December 31, 2019, unless Bretton Woods Telephone Company, Inc. fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twelfth day of
December, 2019.

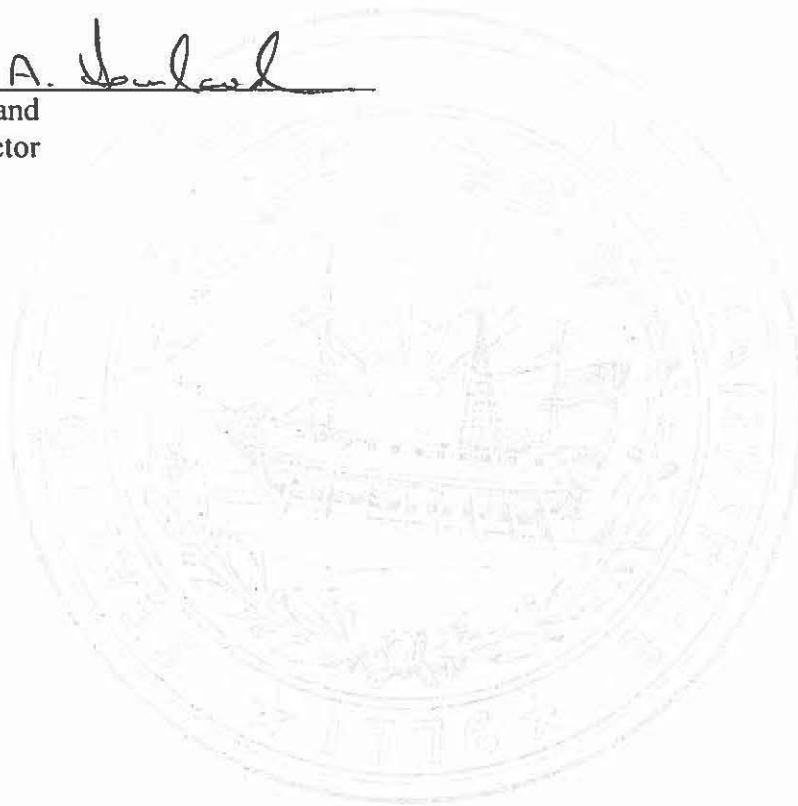
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