

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

<b>New Windsor Telephone Company</b>	:	
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<b>Petition for Approval of Proposed Corporate Reorganization pursuant to Section 7-204 of the Public Utilities Act and for Other Appropriate Relief.</b>	:	<b>12-0534</b>
	:	
	:	

ORDER

By the Commission:

**I. PROCEDURAL HISTORY**

On September 21, 2012, New Windsor Telephone Company (the "Applicant" also referred to as "New Windsor") filed a verified petition requesting approval of the reorganization of New Windsor in accordance with Section 7-204 of the Public Utilities Act ("Act"), 220 ILCS 5/7-204, and for all other appropriate relief.

Pursuant to proper notice, this matter came for hearing before a duly authorized Administrative Law Judge of the Illinois Commerce Commission ("Commission") at its offices in Springfield, Illinois, on November 16, November 27, December 4, 2012 and December 6, 2012. Appearances were entered by Gary L. Smith, counsel for Applicant, and James Olivero and Angelique Palmer of the Office of General Counsel for the Staff of the Illinois Commerce Commission ("Staff"). Applicant submitted the testimony of Troy Nimrick, General Manager of New Windsor, in support of the petition. At the December 6, 2012 hearing, Staff indicated that it had no objection to the approval of the petition subject to a Stipulation (the "Stipulation") entered into by the parties. At the conclusion of the December 6, 2012 hearing, the record was marked "Heard and Taken," subject to the filing of a Joint Draft Proposed Order and the Stipulation on December 10, 2012.

**II. STATUTORY AUTHORITY**

Section 7-204 of the Act requires the Commission to approve a reorganization of a public utility and the pertinent statutory language is as follows:

**7-204. Reorganization defined; Commission approval therefore.**

- (a) For purposes of this Section, "reorganization" means any transaction which, regardless of the means by which it is accomplished, results in a change in the ownership of a majority of

the voting capital stock of an Illinois public utility; or the ownership or control of any entity which owns or controls a majority of the voting capital stock of a public utility; or by which 2 public utilities merge, or by which a public utility acquires substantially all of the assets of another public utility; provided, however, that "reorganization" as used in this Section shall not include a mortgage or pledge transaction entered into to secure a bona fide borrowing by the party granting the mortgage or making the pledge.

In addition to the foregoing, "reorganization" shall include for purposes of this Section any transaction which, regardless of the means by which it is accomplished, will have the effect of terminating the affiliated interest status of any entity as defined in paragraphs (a), (b), (c) or (d) of subsection (2) of Section 7-101 of this Act where such entity had transactions with the public utility, in the 12 calendar months immediately preceding the date of termination of such affiliated interest status subject to subsection (3) of Section 7-101 of this Act with a value greater than 15% of the public utility's revenues for that same 12-month period. If the proposed transaction would have the effect of terminating the affiliated interest status of more than one Illinois public utility, the utility with the greatest revenues for the 12-month period shall be used to determine whether such proposed transaction is a reorganization for the purposes of this Section. The Commission shall have jurisdiction over any reorganization as defined herein.

- (b) No reorganization shall take place without prior Commission approval. The Commission shall not approve any proposed reorganization if the Commission finds, after notice and hearing, that the reorganization will adversely affect the utility's ability to perform its duties under this Act. In reviewing any proposed reorganization, the Commission must find that:
- (1) the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service;
  - (2) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers;
  - (3) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes;

- (4) the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;
  - (5) the utility will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities;
  - (6) the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction;
  - (7) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.
- (c) The Commission shall not approve a reorganization without ruling on: (i) the allocation of any savings resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated.
- (d) The Commission shall issue its Order approving or denying the proposed reorganization within 11 months after the application is filed. The Commission may extend the deadline for a period equivalent to the length of any delay which the Commission finds to have been caused by the Applicant's failure to provide data or information requested by the Commission or that the Commission ordered the Applicant to provide to the parties. The Commission may also extend the deadline by an additional period not to exceed 3 months to consider amendments to the Applicant's filing, or to consider reasonably unforeseeable changes in circumstances subsequent to the Applicant's initial filing.
- (e) Subsections (c) and (d) and subparagraphs (6) and (7) of subsection (b) of this Section shall apply only to merger applications submitted to the Commission subsequent to April 23, 1997. No other Commission approvals shall be required for mergers that are subject to this Section.
- (f) In approving any proposed reorganization pursuant to this Section the Commission may impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of the public utility and its customers.

(220 ILCS 5/7-204)

### III. NEW WINDSOR'S POSITION

Mr. Nimrick testified that New Windsor is an Illinois corporation with its principal office in New Windsor, Illinois, that provides local exchange telecommunications services on a non-competitive basis to fewer than 35,000 subscriber access lines.

Mr. Nimrick further testified that the management and Board of Directors of Applicant, after considering the advice of outside counsel and accountants, proposed a corporate reorganization to pursue certain business opportunities in the increasingly competitive telecommunications environment. Mr. Nimrick explained that the purpose of this reorganization is to provide the flexibility necessary to effectively pursue unregulated business opportunities while segregating the operations and assets of New Windsor from liabilities and potential business risks. Applicant specifically intends to create a holding company structure with new competitive and/or unregulated businesses being operated by "sister" companies of New Windsor.

Applicant's reorganization will be accomplished in the following manner. New Windsor has incorporated New Windsor Communications, Inc., as a wholly-owned subsidiary. New Windsor Communications, Inc. has created a wholly-owned Illinois subsidiary corporation called New Windsor Merger, Inc. New Windsor has entered into an agreement to merge with New Windsor Merger, Inc., with that agreement providing that New Windsor will be the surviving corporation upon the completion of the merger and will retain all telephone operating assets, rights and liabilities as it held prior to the merger and New Windsor Communications will own the stock in New Windsor, Windsor Tel, Inc. and New Windsor Cable TV, Inc. The shareholders of New Windsor at the time of the merger will become shareholders of New Windsor Communications, Inc. This type of reorganization is commonly referred to as a "reverse triangular merger." Mr. Nimrick testified that there are three primary reasons to proceed with reorganization.

First, New Windsor currently owns all the stock in New Windsor Communications, Inc., which owns all the stock in New Windsor Merger, Inc. New Windsor also owns all the stock in Windsor Tel, Inc. and New Windsor Cable TV, Inc. which owns minority interests in Western Illinois Network Services, LLC, Western Illinois Video, LLC and Tri Rural Independent Operations, LLC. Under the present arrangement, the annual report to the Commission includes the non-regulated activities of New Windsor's subsidiaries. Under the proposed reorganization, only the telephone company operations would be reported publically and the competitive operations of New Windsor Tel, Inc., New Windsor Cable TV, Inc., Western Illinois Network Services, LLC, Western Illinois Video, LLC, and Tri Rural Independent Operations, LLC would be out of public view. In addition, any other future non-regulated business pursuits under a different holding company arrangement would avoid the public reporting that is now required under the annual report.

Second, the Board feels the reorganization will make it easier to maintain the non-regulated business investments separate from the telephone company.

The third reason to reorganize is the potential liability aspect. By the proposed reorganization, liability for operations of different businesses may be limited to the company involved and may not necessarily subject all of the assets of all of the businesses to a possible adverse judgment. It is appropriate to segregate the operations and assets of the phone company from the liabilities and potential risks associated with the pursuit of other non-regulated operations.

Mr. Nimrick explained that since New Windsor is the surviving corporation in its merger with New Windsor Merger, Inc., there is no transfer of regulated telephone company assets and there will be no effect on the regulated assets and liabilities of New Windsor. The effect of these transactions is to have the issued and outstanding shares of common stock of New Windsor held and owned by New Windsor Communications, Inc. and New Windsor Communications, Inc. will then be the holding company for New Windsor, Windsor Tel, Inc. and New Windsor Cable TV, Inc. Mr. Nimrick further explained that the shareholders of New Windsor at the time of the merger would become shareholders of New Windsor Communications, Inc. and, as such, the contemplated transactions involve no change in the ultimate ownership and control of New Windsor.

Mr. Nimrick stated that the officers, directors and shareholders of New Windsor Communications, Inc. would be the same as New Windsor. Mr. Nimrick also explained that the reorganization would not diminish New Windsor's ability to provide adequate, reliable, efficient, safe and least-cost telecommunications services and the reorganization would not result in any unjustified subsidization of non-utility activities by New Windsor or its customers because the company will continue to operate with the same personnel and in the same manner as it has in the past.

Mr. Nimrick explained that the costs and facilities would continue to be fairly and reasonably allocated between utility and non-utility actives in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes. He further explained that the reorganization would not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure. Mr. Nimrick testified that the utility would remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities. Finally, Mr. Nimrick testified that the reorganization is not likely to have a significant adverse effect on competition in markets over which the Commission has jurisdiction nor will the reorganization result in any adverse rate impacts on retail customers because the company will not change its rates as a result of the merger.

#### **IV. STAFF'S POSITION**

Subsequent to the filing of the Petition, the Applicant and Staff entered into discussions with the intention of reaching an uncontested resolution of the matter. As a result of such discussions, Staff did not file testimony in this docket. Rather, the

Applicant and Staff have entered into the Stipulation. Subject to the terms set forth in the Stipulation, Staff finds that the Applicant has satisfied the requirements of Section 7-204 and recommends Commission approval of the reorganization. Staff and Applicant submitted a draft Order to the Administrative Law Judge for consideration and recommend its adoption.

## V. THE STIPULATION

As noted above in the Procedural History section of this Order, Applicant and Staff entered into the Stipulation by which the parties have fully resolved any and all outstanding issues in this proceeding. Pursuant to the Stipulation, Staff and Applicant agree and stipulate that the statements of fact set forth in Mr. Nimrick's testimony constitutes an evidentiary basis for the Commission to make the findings of fact set forth in Section 7-204(b)(1) through (b)(7) and 7-204(c)(i) through (ii) of the Act, such that it can enter an order approving the proposed transaction. Staff does not oppose the introduction into evidence of Mr. Nimrick's testimony, and waived cross-examination of Mr. Nimrick.

Applicant agrees that the pursuant to Section 7-204(f) of the Act, the following should be imposed as conditions of approval of the proposed transaction:

- (a) New Windsor will continue to comply with 83 Ill. Adm. Code Part 712 "Cost Allocation For Small Local Exchange Carriers";
- (b) New Windsor will not seek recovery of any incremental costs incurred in accomplishing the reorganization;
- (c) New Windsor will pass on any savings resulting from the reorganization to its ratepayers;
- (d) New Windsor will provide to the Manager of the Accounting Department of the Illinois Commerce Commission, a copy of audit/review reports, financial reports, or such other reports as the Federal Communications Commission ("FCC") might from time to time require, that are submitted to the FCC in compliance with the 5<sup>th</sup> Order on Reconsideration of the Transformation Order within one week of the reports being submitted to the FCC.

Accordingly, the parties recommend that the Commission approve the reorganization subject to the terms and conditions of the Stipulation.

## VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission concludes that the Stipulation and conditions specified therein are reasonable and subject to the same, the proposed reorganization should be approved.

The Commission, having reviewed the entire record, is of the opinion and finds that:

- (1) New Windsor Telephone Company is an Illinois corporation and is a telecommunications carrier as defined in Section 13-202 of the Act which is providing telecommunications services as defined in Section 13-203 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) under Section 7-204(f), the Commission has the authority to impose such terms, conditions or requirements as, in the Commission's judgment, are necessary to protect the interests of the public utility and its customers;
- (4) subject to the timely and complete performance of the Stipulation, including the conditions set forth therein, the proposed reorganization will not adversely affect the New Windsor Telephone Company's ability to perform its duties under the Act and the proposed reorganization meets the criteria set forth in Section 7-204(b) and 7-204(c)(i) through (ii) of the Act in that:
  - (a) the proposed reorganization will not diminish Applicant's ability to provide adequate, reliable, efficient, safe and least-cost public utility service;
  - (b) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by Applicant or its customers;
  - (c) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes;
  - (d) the proposed reorganization will not significantly impair Applicant's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;

- (e) Applicant will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities;
  - (f) the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction;
  - (g) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.
- (5) the proposed reorganization is reasonable and the relief requested under Section 7-204 of the Act should be granted as hereinafter set forth subject to the following conditions:
- (a) New Windsor Telephone Company will continue to comply with 83 Ill. Adm. Code Part 712 "Cost Allocation For Small Local Exchange Carriers";
  - (b) New Windsor Telephone Company will not seek recovery of any incremental costs incurred in accomplishing the reorganization;
  - (c) New Windsor Telephone Company will pass on any savings resulting from the reorganization to its ratepayers;
  - (d) New Windsor Telephone Company will provide to the Manager of the Accounting Department of the Illinois Commerce Commission, a copy of audit/review reports, financial reports, or such other reports as the FCC might from time to time require, that are submitted to the FCC in compliance with the 5<sup>th</sup> Order on Reconsideration of the Transformation Order within one week of the reports being submitted to the FCC.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that consent and approval is granted to Applicant to carry out all actions necessary to effectuate the reorganization of New Windsor Telephone Company as described herein.

IT IS FURTHER ORDERED that the conditions described in Finding 5 are hereby imposed on New Windsor Telephone Company as a consequence of the reorganization.

IT IS FURTHER ORDERED that New Windsor Telephone Company shall notify the Chief Clerk of the Commission of the completion of the reorganization within thirty days thereof.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 19th day of December, 2012.

(SIGNED) DOUGLAS P. SCOTT

Chairman