

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Petition of Polar Communications Mutual Aid Corporation for Approval of Merger with Polar Telecommunications, Inc.

ISSUE DATE: January 2, 2007

DOCKET NO. P-556,6101/PA-06-971

In the Matte of an Investigation into the Rates Charged in the Drayton and Pembina Exchanges

DOCKET NO. P-556, 6101/CI-06-1739

ORDER APPROVING MERGER, WITH CONDITIONS, OPENING INVESTIGATION, AND REQUIRING COMMENTS

**PROCEDURAL HISTORY**

On June 30, 2006, Polar Communications Mutual Aid filed its Petition for Approval of a merger between Polar Communications Mutual Aid Corporation (Polar) and its wholly owned subsidiary Polar Telecommunications, Inc. (PTI). Polar seeks approval of its merger with PTI and authorization for Polar to provide service to customers in the Pembina, Minnesota exchange. Polar also requested to be designated as an Eligible Telecommunications Carrier (ETC) for the Pembina exchange under 47 U.S.C. § 214(e).

On August 23, 2006, the Minnesota Department of Commerce (the Department) filed comments.

The Commission met on November 30, 2006 to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. Merits of the Merger**

**A. Background**

Prior to the merger, Polar was the parent company of PTI. Both Polar and PTI had North Dakota and Minnesota customers. According to the Petition, Polar served customers in 22 North Dakota

exchanges and PTI, prior to the merger, served customers in seven North Dakota exchanges. Polar and PTI also served Minnesota customers from their North Dakota exchanges. In addition, in 2004, Polar purchased Wolverton Telephone Company, which continues to serve customers in two exchanges in North Dakota and one in Minnesota.

### **B. Merger Benefits Cited**

Polar asserted that the benefits of its merger with PTI include the consolidation of services and other efficiencies. Further, the customers of Polar will have more uniformity in service availability and billing. Minnesota customers will benefit by not having to make toll calls to other Polar customers except those in three North Dakota exchanges. Polar has the financial, technical and managerial qualifications to provide quality service. Polar's Consolidated financial statements were provided for years 2004 and 2005.

### **C. The Department's Recommendation Regarding the Merger**

The Department referenced the merger benefits cited by Polar, did not dispute those claimed benefits, concluded that the merger was in the public interest, and recommended that the Commission approve it.

### **D. Commission Analysis and Action**

Having considered Polar's filing and the Department's comments and recommendation, the Commission finds that the record as a whole supports a finding that the merger between Polar and PTI is consistent with the public interest. Based on that finding, the Commission will approve the merger.

## **II. Timing of the Request for Approval**

### **A. Background**

Minn. Stat. § 237.23 states that it is unlawful for any telephone company, corporation, person, partnership, or association subject to the provisions of this chapter to purchase or acquire the property, capital stock, bonds, securities, or other obligations, or the franchises, rights, privileges, and immunities of any telephone company doing business within the state without first obtaining the Commission's approval.

On May 30, 2006, the Department contacted Polar Communications with a question regarding the absence of reported revenue from PTI for the Pembina exchange and learned that Polar Communications had included the Pembina revenue in its annual report because PTI had merged with Polar Communications. The Department concluded that Commission approval was required for the Merger. The Department requested that Polar Communications file a belated petition requesting Commission approval of the Merger.

## **B. Polar's Position**

In its petition, Polar stated that PTI merged with and into Polar Communications effective January 1, 2005 pursuant to the terms of the July 31, 2004 Merger Agreement (Agreement). The Company acknowledged that the merger did not receive prior Commission approval as required by Minn. Stat. §237.23.

Polar argued that since its failure to obtain prior Commission approval was an oversight rather than a knowing and intentional violation it would be improper to assess penalties against it. Polar explained that the vast majority of the PTI exchanges and local access lines are in North Dakota where no prior approval was required from the North Dakota Public Service Commission. Polar stated it had viewed the merger as an internal restructuring since the merger resulted in no change in control of PTI (a wholly owned subsidiary of Polar with the identical board of directors as Polar). Polar stated that it simply did not take into account the regulatory impact of the merger on PTI's access lines in Pembina (77 lines). Finally, the Company stated, once Department representatives brought this matter to its attention it acted promptly to request the Commission's approval.

## **C. The Department's Recommendation Regarding the Company's Failure to Obtain Prior Approval**

The Department recommended that the Commission accept the settlement reached by the Department and the applicants that the Company pay \$500 in lieu of penalties. The Department stated that this was a reasonable way to resolve the statute violation in light of Polar Communications' relatively small presence in Minnesota, the lack of customer harm associated with this transaction, the absence of any change in ownership or control, and the cooperation of the Petitioners in attempting to rectify the statute violation. The Department clarified that Polar Communications' agreement to this settlement was not an admission of any knowing and intentional violation of Minnesota law.

## **D. Commission Analysis and Action**

The Commission finds that the parties' proposed agreement on this issue is appropriate under the circumstances and will approve it. Consistent with that agreement, therefore, the Commission will direct Polar submit payment of \$500 in lieu of penalties within 30 days of this order.

In so doing the Commission clarifies that the Company has not admitted any knowing and intentional violation of Minnesota law and the Commission likewise has made no determination whether or not the Company's violation was knowing and intentional.

## **III. Untariffed Rates**

Minn. Stat 237.07, Subd. 1 states:

Filing requirements. Subdivision 1. Filing of charges. Every telephone company shall keep on file with the department a specific rate, toll, or charge for every kind

of noncompetitive service and a price list for every kind of service subject to emerging competition, together with all rules and classifications used by it in the conduct of the telephone business, including limitations on liability. The filings are governed by chapter 13. When a company sells services subject to emerging competition on an individually priced basis, it shall file a statement of the charges to its customers with the commission and the department. The department shall require each telephone company to keep open for public inspection, at designated offices, so much of these rates, price lists, and rules as it deems necessary for the public information.

Based on information developed by Commission Staff in Briefing Papers dated November 30, 2006, it appears that Polar may have charged untariffed rates to Pembina, Minnesota customers from approximately July 2005 until July 2006 and to Drayton, Minnesota customers from 1995 until approximately July 2006. The Commission finds that there is reasonable cause to open an investigation into this matter to develop the record and to consider appropriate action.

Accordingly, the Commission will open an investigation under Minn. Stat. §237.081 to examine these issues, including appropriate enforcement and remedial actions. As part of the investigation, the parties will be required to file comments within 60 days of the Order in this matter.

#### **IV. Post-Merger Regulatory Actions**

Consistent with Commission approval of the merger, the Department recommended that the Commission to 1) authorize Polar to provide local exchange service in the Pembina exchange; 2) designate Polar as an ETC in the Pembina exchange; 3) cancel PTI's certificate of authority; 4) require Polar to inform the Commission of the completion of the transfer of PTI's NPA-NXX codes for the Pembina exchange in accordance with requirements of the North American Numbering Plan Administrator; 5) confirm that Polar is responsible for any regulatory assessments on behalf of PTI; and 6) require Polar to revise its tariffs to reflect rates and terms and conditions of service of former PTI customers in the Pembina exchange within 20 days of the order.

The Commission finds that the steps recommended by the Department are appropriate regulatory responses to the merger and will adopt them.

### **ORDER**

1. The Commission hereby approves the merger between Polar and PTI with the following conditions:
  - Polar shall revise its tariffs to reflect rates and terms and conditions of service of former PTI customers in the Pembina exchange within 20 days of the date of this Order;
  - PTI's certificate of authority is cancelled;

- Polar shall inform the Commission of the completion of the transfer of PTI's NPA-NXX codes for the Pembina exchange in accordance with requirements of the North American Numbering Plan Administrator;
  - Polar shall submit payment of \$500 in lieu of penalties within 30 days of the order with the understanding that the settlement is not an admission of a knowing and intentional violation of Minnesota law; and
  - Polar shall be responsible for any regulatory assessments on behalf of PTI.
2. The Commission hereby opens an investigation under Minn. Stat. §237.081 to examine whether Polar has charged untariffed rates in the Pembina and Drayton exchanges and, if so, any appropriate remedies. The investigation is assigned to Docket No. P-556, 6101/CI-06-1739.
  3. Within 60 days of this Order as part of the investigation initiated in Order Paragraph 2, the parties shall file comments whether Polar has charged untariffed rates in the Pembina and Drayton exchanges and, if so, what remedies would be appropriate.
  4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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